A Digest

OF THE

LAW OF SHIPPING

AND OF

MARINE INSURANCE,

WITH ILLUSTRATIONS.

BY

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INTRODUCTION.

In consequence of the vast importance of commercial transactions to this country, Mercantile Law has now for a long period formed one of the principal divisions of the Law of England. As commerce has increased, so has Mercantile Law gradually expanded. It is derived almost entirely from the customs and usages of merchants, which have received the sanction and approval of the Courts, or, in a few instances, of the Legislature. It dates from that revival of commerce which followed on the close of the Dark Ages. Parts of it, indeed, belong to an earlier period, having originated with the ancient Greek traders, who formerly were the carriers of the world. For instance, the

English Law of General Average is a mere imitation of the rules on the subject contained in that celebrated code known as the Laws of the Rhodians, which has been well termed "the masterpiece of ancient jurisprudence." The fourteenth century produced the first modern code of Maritime Law—the Consolato del Mare. It is a collection of the rules observed by the merchants of Barcelona. To the Consolato, our marine jurisprudence is also indebted for some of its most valuable rules.

The Commercial Law of England was in a state of chaos till it was reduced to a state of order and symmetry by the genius of Lord Mansfield, who has well earned the title, given him by Mr. Justice Buller, of "the founder of the Commercial Law of England." Lord Mansfield was followed in the work of communicating form and symmetry to this important branch of the law by Lord Stowell, whose judgments are of force not only in this country but even in foreign states.

To summarise a portion of those rules which govern the commercial relations of merchants in England, and to make the knowledge of them more accessible, is the

object of the present Work. In short, it aims at being a Digest or Summary of the Rules of Law relating to Shipping, or to the conveyance of goods by sea, and of those relating to a subject closely related to it—Marine Insurance.

Where the rules of law present any difficulty, a few illustrations have been added. These illustrations are, in almost every instance, taken from cases decided in our Courts. They have only been inserted where it appeared necessary, in order that the size of the book might correspond with what the book itself professes to be—a summary or digest. The form and arrangement of the Work is based on that adopted by Mr. Justice Stephen in his Digests of the Law of Evidence and of the Criminal Law. The success which has attended these two works proves the utility and popularity of the style.

In compiling this Digest of the Law of Shipping and of Marine Insurance, the Author has been greatly assisted by the following works:—Abbott on Shipping, Arnould on Marine Insurance, Stevens on Average, and Smith's Mercantile Law. To these books, which

have long been considered the standard works on their respective subjects, the reader who desires to become fully acquainted with the details and the growth of the Law of Shipping and of the Law of Marine Insurance must be referred.

H. NEWSON.

1, Hare Court, Temple,
8th July, 1879.

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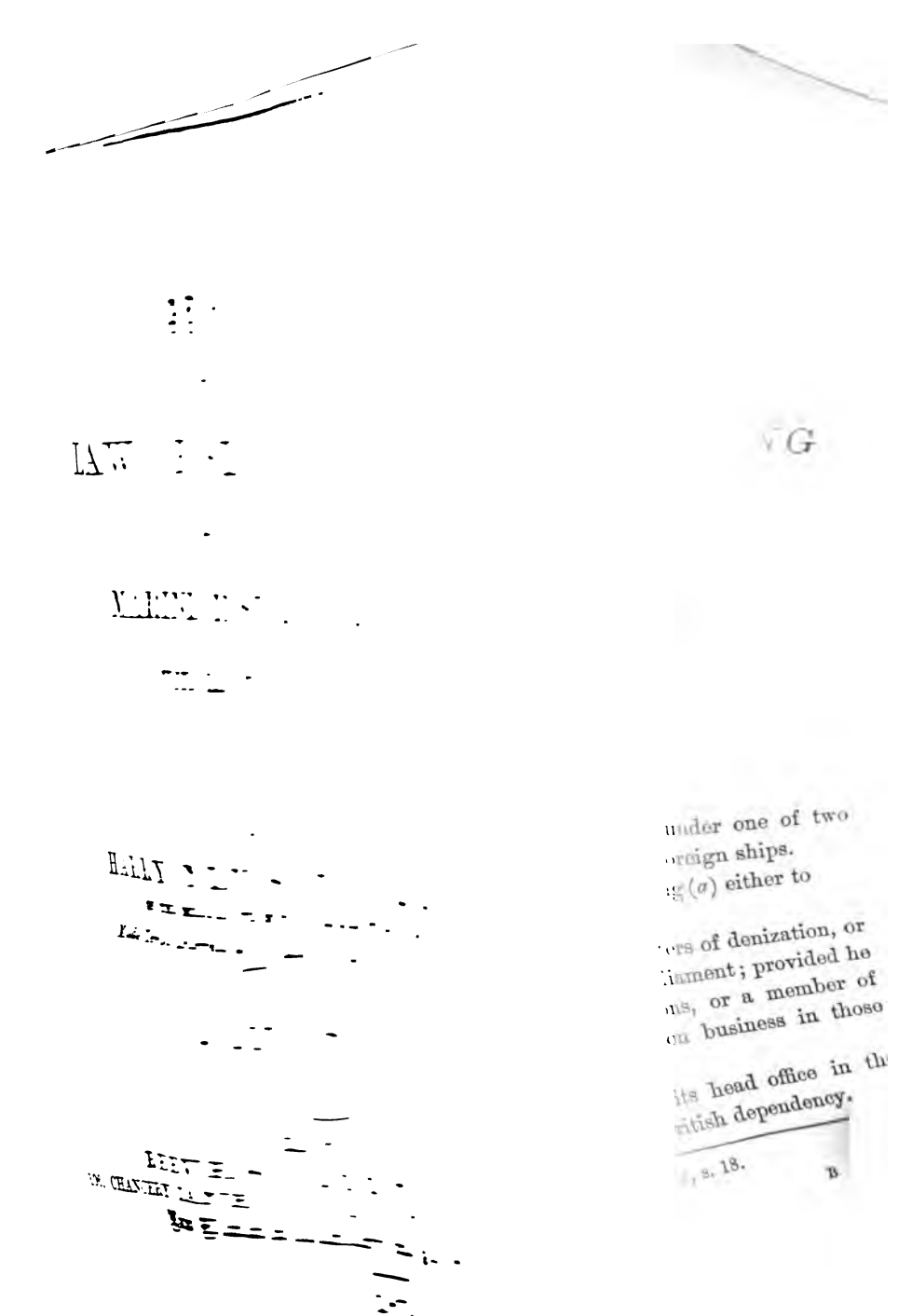
Park on Insurance.

Smith's Mercantile Law.

Stevens on Average.

ERRATUM.

Page 31—*For* "4 & 5 Anne, c. 3," *read* "4 & 5 Anne, c. 16."



If the ship does not belong to a member of any one of these three classes, she is not a British ship, but a foreign ship.

A natural-born British subject, if he has taken the oath of allegiance to a foreign sovereign or state, cannot be an owner of a British ship; unless he afterwards take the oath of allegiance to the Queen and reside in British dominions, or be a member of a firm or factory carrying on business within them.

Section 2.

British ships have alone the right to assume the national flag and character, and to demand the protection it affords.

Notes.—The right to assume the national flag and to the protection that affords, are now the only privileges of a British ship. Formerly British ships had the exclusive right of importing goods into the United Kingdom and the colonies, and of carrying on the coasting trade (*b*).

Section 3.

A British ship, to have the privileges mentioned in Section 2, must be registered (*c*); unless it be either

(1.) A coasting or river vessel not exceeding fifteen tons;

(2.) A coasting or fishing vessel, employed on the coast of Newfoundland or in the Gulf of St. Lawrence, and not exceeding thirty tons.

No ship is absolutely required to be registered, registration being only necessary to acquire the character and privileges of a British ship (*c*).

(*b*) Smith's Merc. Law, p. 172.
(*c*) 17 & 18 Vict. c. 104, s. 19.

However, no custom house officer shall grant a transire or clearance for a ship till the master declares her nationality (*d*). If such vessel try to sail without such transire, she may be detained. The persons to register British ships are the principal custom officers; or if, in the case of a British possession, there be no custom officer, the governor or administrator (*e*).

Section 4.

A British ship can be registered at any British port. Such port will then become her port of registry, or the port to which she belongs (*f*).

If she becomes, for the first time, the property of British owners at a foreign port, a provisional certificate of registration can be obtained from the British consul there. Such certificate will be of force for six months, or till the ship reaches a British port of registry (*g*).

Section 5.

Before a ship can be registered as a British ship, she must be surveyed by a proper qualified officer, and in accordance with the regulations approved of by the Board of Trade (*h*). She must also have her name and the name of her port of registry on her stern, her name on her bows, her number and registered tonnage on her main beam, and on her stern and stem a scale of feet, denoting her draught

(*d*) 17 & 18 Vict. c. 104, ss. 19, 102.
(*e*) *Ib.* ss. 30, 31; 21 & 22 Vict. c. 106.
(*f*) 17 & 18 Vict. c. 104, s. 33.
(*g*) *Ib.* s. 54.
(*h*) *Ib.* ss. 29, 36; 35 & 36 Vict. c. 73, s. 3.

of water; and the owner must make a declaration setting forth certain particulars enumerated in 17 & 18 Vict. c. 104, ss. 38 and 39. Altering or obliterating any of such marks renders the master of the vessel liable to a penalty of 100*l.*, unless such be done in order to avoid capture by an enemy. The Board of Trade can exempt any ships from the above regulations (*i*).

Any change in the master of the ship must be entered on the certificate of registry (*k*).

Section 6.

If a registered ship be altered to such an extent as not to correspond with her description in the register, the registrar of the port at which she is altered must be applied to, to either register the alteration, or register the ship anew (*l*).

The registry of any British ship may be transferred from one port to another on the application of the parties interested; such transfer of the registry will not affect the rights of the owners or mortgagees of the ship (*m*).

Section 7.

If the British flag be used on any ship owned, or even partly owned, by a person not entitled to own British ships, that ship will become forfeited to her Majesty, unless it be so used merely to avoid capture by an enemy; and it may be brought for adjudication before an Admiralty Court (*n*).

(*i*) 36 & 37 Vict. c. 85, s. 3.
(*k*) 17 & 18 Vict. c. 104, s. 46, &c.; 35 & 36 Vict. c. 73, s. 4.
(*l*) 17 & 18 Vict. c. 104, ss. 84, 85, 86, 87.
(*m*) *Ib.* ss. 89, 90, 91.
(*n*) *Ib.* s. 103.

If the owner or master of a British ship conceals its British character or assumes a foreign character, the ship will become forfeited in the same manner (*n*).

Section 8.

If any unqualified transferee acquire, as owner, any interest in a ship using the British flag and assuming the character of a British ship, his interest will become forfeited (*n*).

Note.—An unqualified transferee is a person not a British subject, or a body corporate not having its head office in the United Kingdom or some British possession; *vide* Sect. 1.

Section 9.

The property in every British ship is considered to be in sixty-four parts; and no person can be registered as owner of any part, not being a sixty-fourth (*o*).

Not more than thirty-two persons can be registered as legal owners of a ship. However, any number of persons, not exceeding five, can be registered as joint owners of a ship, or of any share or number of shares in it; but then they cannot dispose in severalty of their respective interests in the vessel (*o*).

No trust can be entered on the register (*p*).

A corporation owning a British ship may be registered by its corporate name (*q*).

(*n*) 17 & 18 Vict. c. 104, s. 103.
(*o*) *Ib.* s. 37.
(*p*) *Ib.* s. 43.
(*q*) *Ib.* s. 37.

CHAPTER II.

PART OWNERS AND SHIP'S HUSBAND.

Section 10.

Any part owner of a ship is liable, just as a partner, for all expenses incurred on its account; unless he can show that such expenses were not incurred on his own credit (*a*).

However, he is not liable for any admission or act of a co-owner, to which he was not a party.

Illustration.

If one of the co-owners of a vessel own the cargo on board her, and such cargo be condemned as contraband, the condemnation will involve the forfeiture of his share and interest in the vessel. But the shares of the other co-owners will not be confiscated, provided they were not privy to the contraband goods being placed on board (*b*).

Section 11.

If some of the co-owners pay a tradesman employed to repair their vessel a certain part of the cost corresponding to their shares, they will still be liable for the remainder of the cost; unless the tradesman release them on some valuable consideration being given, or by deed (*c*).

(*a*) *Chappell* v. *Bray*, 6 H. & N. 145.
(*b*) *The Jonge Tobias*, 1 Rob. 329.
(*c*) Bacon's Ab. Merchant, D.; *Passmore* v. *Bousfield*, 1 Starkie, 296.

Section 12.

In the case of the vessel belonging to several co-owners, they generally elect one of their number to manage it exclusively. The owner so elected is termed the ship's husband or managing owner.

The powers of the ship's husband are generally determined by a special agreement made between him and the other co-owners.

In the absence of any such agreement, the ship's husband must see that the vessel is properly equipped, procure freights or charter-parties, adjust averages and freights, disburse and receive moneys on account of the ship, and keep the necessary books and accounts. The acts of a ship's husband, within the scope of his authority, will bind all the co-owners (*d*).

Section 13.

If there be a special agreement, and under it the ship's husband has authority to do certain specific acts, he must not exceed his authority.

Illustration.

If the ship's husband have the authority of the owners to make a charter-party, and make one accordingly, he will have no power without their express sanction to cancel it, though such cancellation be beneficial to the owners (*e*).

Section 14.

The ship's husband has a right of action against each co-owner for a proportionate part of the costs incurred by him in equipping the vessel.

(*d*) Abbott, Shipping, p. 79; *Sims* v. *Brittain*, 4 Barn. & Adol. 375.
(*e*) *Thomas* v. *Lewis*, 4 Ex. D. 18.

The ship's husband has also a lien on the freight for his disbursements on the ship's account; but he has not a charge on it (*f*).

Section 15.

If the co-owners cannot agree in the appointment of a ship's husband, the Admiralty Court will arrest the vessel if the majority of the co-owners wish to send it abroad, contrary to the will of the other co-owners, and so prevent its sailing.

Provided that if the majority give security in an amount corresponding to the value of the shares of the minority, either to bring back the vessel in safety, or to pay the minority the value of their shares, the court will allow the vessel to be employed by the majority.

Then if such security be given, and the vessel be sent abroad, the members of the minority will neither be entitled to any share in the profits of the venture, nor liable to make good any losses incurred (*g*).

In the case of the co-owners being equally divided, either party may ask the court to interfere in the above manner.

(*f*) *Benyon* v. *Godden*, 3 Ex. D. 263.
(*g*) *Davis* v. *Johnson*, 4 Sim. 539; Abbott on Shipping, pt. i. c. 3.

CHAPTER III.

SALES AND MORTGAGES OF SHIPS.

Section 16.

A REGISTERED ship, or any share in it, can only be transferred by a bill of sale under seal, drawn up in the form prescribed by 17 & 18 Vict. c. 104, s. 55. The bill of sale must be attested by at least one witness, and registered by the registrar of the port at which the ship is registered (*a*).

If there are several bills of sale relating to the same vessel, or to the same shares in it, they must be registered in the order of their production to the registrar of the port (*a*).

A transferee of a British ship, or share in it, cannot be registered till he has made the declaration prescribed by 17 & 18 Vict. c. 104, s. 56, scheds. F. and G.

A vessel built to be sold to a foreigner, and to be delivered at a foreign port, is not a British ship, and therefore can be assigned without a bill of sale, and without being registered (*b*).

Mere registration of the bill of sale will not give any title to the ship or shares to a person not really entitled. But such person will be compelled in equity to execute a retransfer in favour of the real owner, and to account for

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(*a*) 17 & 18 Vict. c. 104, s. 57.
(*b*) *The Union Bank of London* v. *Lenanton*, 3 C. P. D. 243.

all the earnings of the vessel while he was registered as owner; even though there has been no fraud (*c*).

SECTION 17.

The registrar of the port of registry can grant to the owner of a registered ship a certificate of mortgage or sale, authorizing certain persons specified in it to sell or mortgage the vessel at any place out of the country or possession in which the ship's port of registry is situated (*d*).

SECTION 18.

A British ship, or any share in her, can only be validly mortgaged in the form prescribed by 17 & 18 Vict. c. 104, s. 66, sched. I.

The form must contain all the particulars relating to the vessel, and must be under seal, and be attested and registered.

Provided that an absolute assignment may operate as a mortgage, if the parties clearly intended it to be a mortgage only (*e*).

SECTION 19.

If more than one mortgage of the same British ship, or of the same share in her, be registered, the mortgagees will have priority according to the dates of the registration of their respective mortgages, in spite of any notice, express or implied, which they may have had (*f*). Thus the priority

(*c*) *Holderness* v. *Lamport*, 29 Beav. 129; *The Inniefallen*, L. R., 1 A. & E. 72; 25 & 26 Vict. c. 63, s. 3.
(*d*) 17 & 18 Vict. c. 104, ss. 76—83.
(*e*) *Myers* v. *Willis*, 17 C. B. 77; *Hutchinson* v. *Wright*, 25 Beav. 444; *Ward* v. *Beck*, 13 C. B., N. S. 668.
(*f*) 17 & 18 Vict. c. 104, s. 69.

will not depend on the dates of the execution of the different mortgages.

SECTION 20.

Every mortgagee, whose mortgage has been registered, can dispose of, or alienate the subject-matter of, his mortgage. Provided that if he be a puisne mortgagee, the consent of the first mortgagee be obtained to the alienation, unless the mortgaged ship, or share in it, be disposed of under the order of some court having jurisdiction in the matter (*g*).

SECTION 21.

The mortgagor of a British ship remains the owner of it till the mortgagee takes possession of the ship, except so far as may be requisite for the purposes of the security (*h*). Consequently the contracts of the mortgagor of a British ship, or share in it, made *bonâ fide* by him while in possession of the vessel for the employment of such vessel, will bind the mortgagee; provided they do not impair the security of the mortgagee (*i*).

SECTION 22.

The mortgagee of a ship, or share in it, is entitled to the possession of the vessel or share, and all its earnings (*k*); subject to all legal liens (*l*).

(*g*) 17 & 18 Vict. c. 104, s. 71.
(*h*) *Ib.* s. 70.
(*i*) *Collins* v. *Lamport*, 4 De G. J. & S. 500.
(*k*) *The European & Australian R. M. Co.* v. *Royal Mail S. P. Co.* 30 L. J., C. P. 247.
(*l*) *Williams* v. *Allsup*, 10 C. B., N. S. 417; *The Mary Ann*, L. R., 1 A. & E. 8; *The Jenny Lind*, L. R., 3 A. & E. 529.

The mortgagee immediately on taking possession becomes the owner of the ship or share, and as such is entitled to receive the freight, whether due or being earned by the vessel when he takes possession (*m*), or a proportionate part of it; and not by virtue of any antecedent contract or right (*n*).

The mortgagee of a British ship may use it as he pleases, provided he employs it *bonâ fide*, and with due regard for its safety (*o*).

Section 23.

When any registered mortgage is discharged, the registrar must enter such discharge on the register (*p*).

Any transmission of a mortgage on a British ship, or share in it, by the death, bankruptcy or insolvency of the mortgagee, or in consequence of the marriage of a female mortgagee, must also be registered (*q*).

On the mortgagor of a British ship, or any share or shares in it, becoming a bankrupt, the mortgagee will be preferred to the creditors' trustee, and the mortgaged property will not be considered as in the order and disposition of the bankrupt, within the meaning of the Bankruptcy Act, 1869 (*r*).

(*m*) *Kerswill* v. *Bishop*, 2 C. & J. 529; *Brown* v. *Tanner*, L. R., 3 Ch. 597; *Gumm* v. *Tyrie*, 6 B. & S. 298.
(*n*) *Keith* v. *Burrows*, 1 C. P. D. 722; 2 C. P. D. 163; 2 App. Cas. 636.
(*o*) *De Mattos* v. *Gibson*, 30 L. J., Ch. 145; *Marriott* v. *The Anchor Reversionary Company*, 30 L. J., Ch. 571.
(*p*) 17 & 18 Vict. c. 104, s. 68.
(*q*) *Ib.* ss. 74, 75.
(*r*) *Ib.* s. 72.

CHAPTER IV.

COLLISION.

Section 24.

If two ships belonging to different owners collide, without the fault of the crew of either vessel, as where the collision is caused by a *vis major*, *e.g.* a storm, the owner of each vessel must bear any damage his vessel sustains, the owner of the other vessel not being liable at all (*a*).

If the collision were occasioned through the fault of both vessels, the loss sustained by each vessel must be apportioned between their owners. Thus the owner of one of the colliding vessels will be liable for half the loss sustained by the other (*a*).

If the collision be caused by the act of the injured party alone, he must bear the loss, and the other is not liable (*a*).

If the collision were due entirely to one vessel, the owner of the injured vessel can recover full compensation for the damage from the owner of the former (*a*); subject to the provisions of the statutes which limit the liability of shipowners. (See Sect. 32.)

Section 25.

Where the collision is due to the fault of one vessel only, the compensation recoverable by the other will consist of

(*a*) *Per* Lord Stowell, in the case of the *Woodrop-Sims*, 2 Dods. 83; recognized by House of Lords in *Haye* v. *Le Neve*, 2 Shaw, Scotch Ap. Cas. 395.

the loss caused directly by the injury to the ship, and of the loss occasioned by her detention for repairs. Provided that no damage occurring to her after the collision, caused by a want of ordinary skill on the part of the master or crew of the injured vessel, will be included (*b*).

SECTION 26.

A collision is the subject of an action *in rem* in the Admiralty Division of the High Court of Justice. The ship responsible for the collision is arrested at commencement of the action, and detained till judgment is pronounced, unless satisfaction be given, or security for costs and the event of the action.

SECTION 27.

The High Court of Justice has jurisdiction over any claim for damages caused by a collision between two vessels, though the collision be caused by a foreign vessel. Such vessel may be arrested and detained till satisfaction be made, or security given to abide the event of the action, and for costs (*c*).

SECTION 28.

The owners of the vessel responsible for the collision will be liable, even though it was let under a charter-party, and the charterers had the entire management of it at the date

(*b*) *The Linda*, Swab. 306; *The Pensher*, Swab. 211.
(*c*) 24 Vict. c. 10, s. 7; and 17 & 18 Vict. c. 104, s. 527.

of the collision, and the collision arose through their act or negligence (*d*).

SECTION 29.

Whenever any vessel shall meet another ship, proceeding in a contrary direction to itself, so that if they were to continue their respective courses they would in all probability collide, the helms of both vessels must be put to port, so that each vessel may pass on the port side of the other (*e*).

SECTION 30.

In the event of a collision between two vessels, the master or other person in charge of either ship must render any assistance he can to the other ship and her crew and passengers, and also give to the person in charge of the other ship the name of his own vessel and of her port of registry; and in default, he will be held liable for the collision in the absence of proof to the contrary; and his certificate may be cancelled or suspended (*f*).

SECTION 31.

The cargo on board the vessel at the date of the collision is never liable for the damage caused, though it belong to the owner of the vessel (*g*). But the owner of the cargo, if lost or damaged by the collision, can recover damages from the owners of the vessel at fault (*h*).

(*d*) *The Ticonderoga*, Swab. 215.
(*e*) 25 & 26 Vict. c. 63, sched. C.; see *The James*, Swab. 55; *The Halcyon*, 1 Lush. 100.
(*f*) 36 & 37 Vict. c. 85, s. 16.
(*g*) *The Victor*, 1 Lush. 72.
(*h*) Abbott, Shipping, pt. vi. ch. 3.

SECTION 32.

The liability of the owners of the vessel responsible for the collision is limited to an aggregate amount not exceeding 15*l.* for each ton of the vessel's tonnage in respect of loss of life or personal injury, either alone or together with loss or damage to the vessel, boats, goods or other things. And in respect of loss and damage to ships, goods, merchandize or other things, whether accompanied or not by loss of life or personal injury, their liability is limited to an aggregate amount, not exceeding 8*l.* for each ton of the ship's tonnage (*i*).

SECTION 33.

The owner of a vessel sunk by an unavoidable accident in a public river is not bound to remove it; but while he continues in possession and control of it, he must use due care to prevent other vessels being injured by their striking against it (*k*).

(*i*) 25 & 26 Vict. c. 63, s. 54.
(*k*) *Brown* v. *Mallett*, 5 C. B. 599; *White* v. *Crisp*, 10 Exch. 312.

CHAPTER V.

CAPTURE AND PRIZE.

Section 34.

The property in a ship captured from the enemy does not vest in her captors, unless and until it has been condemned by a competent court of the capturing power, constituted according to the rules of International Law.

Consequently, before condemnation such a ship cannot be registered as a British ship.

Section 35.

A vessel carried after its capture into a neutral port, cannot, while it remains there, be validly condemned by a court sitting in the country of the captors (*a*).

Section 36.

A minister or consul of the capturing power, accredited to the neutral country to which the prize has been taken, cannot legally condemn it.

But if the state to which the prize is taken be in alliance with the captors, a valid sentence of condemnation can be

(*a*) *The Heinrich and Maria*, 4 Rob. A. R. 43; *The Flad Oyen*, 1 Rob. A. R. 135.

passed either in that state by a consul of the capturing power, or in the territory of the captors (*b*).

Of course, condemnation by a competent court, sitting in the territory of the captors or of a co-belligerent (*c*), of a vessel captured from an enemy, and taken to a port in the country of the captors, is valid.

Section 37.

The seizure and sale of a vessel by a neutral state is of course illegal. Therefore no property in her will pass to the purchaser, but she will remain the property of the person who owned her at the date of the capture (*d*).

Section 38.

Capture by pirates will not deprive the owner of his property in the vessel or goods captured (*e*).

Section 39.

Immediately a vessel captured from an enemy is condemned by a competent court, the property in her vests in the captors, and relates back to the date of the capture.

Hence an assignment of it in the interim will be valid; and the assignee will have a good title to it (*f*).

(*b*) *The Christopher*, 2 Rob. A. R. 209; *Oddy* v. *Bovill*, 2 East, 473.
(*c*) *The Christopher*, 2 Rob. A. R. 209.
(*d*) *Wilson* v. *Forster*, 6 Taunt. 25.
(*e*) Abbott, Shipping, Pt. I. Ch. I. s. 3.
(*f*) *Stevens* v. *Bagwell*, 15 Ves. 139; *Alexander* v. *Duke of Wellington*, 2 Russell & M. 35.

CHAPTER VI.

CONTRACTS WITH SEAMEN.

Section 40.

Every master of a vessel except a coasting vessel of under eighty tons, must enter into an agreement with every seaman he carries to sea from any port in the United Kingdom.

Such agreement must contain:—

(1) The nature and duration (if possible) of the intended voyage and engagement;

(2) The number and description of the crew;

(3) The time when each seaman is to begin work;

(4) The capacity in which each seaman is to serve;

(5) The wages of each seaman;

(6) A scale of the provisions which are to be allowed to each seaman;

(7) Any regulations as to conduct on board, and as to fines and other punishments for misconduct, sanctioned by the Board of Trade (*a*).

Section 41.

In the case of foreign-going ships, every agreement made in the United Kingdom must be signed by each seaman

(*a*) 17 & 18 Vict. c. 104, s. 149.

before a shipping master, who must ascertain that the seaman understands it, and must attest the document (*b*).

However, running agreements extending over two or more voyages may be entered into with the crew, on certain terms being complied with, in the case of foreign-going ships making voyages averaging less than six months in duration (*c*).

Section 42.

In the case of home-trade ships, crews or individual seamen may be engaged before a shipping master, as in the case of foreign-going ships. If they are not so engaged, the master must explain the agreement to them as soon as possible; and the seaman must then sign it before a witness, who must attest his signature (*d*).

Section 43.

When several home-trade vessels belong to same owner, he may make the agreement with the seamen, instead of the master, and may engage the seamen to serve in any of his ships, provided the names of the ships and the nature of the service are specified in the agreement (*e*).

Section 44.

The penalty incurred by a master of a foreign-going ship, or by the master or owner of a home-trade ship, if he carries a seaman to sea without the proper agreement, is a sum not exceeding 5*l*. (*f*).

(*b*) 17 & 18 Vict. c. 104, s. 150.
(*c*) *Ib.* ss. 151 and 152.
(*d*) *Ib.* s. 155.
(*e*) *Ib.* s. 156.
(*f*) *Ib.* s. 157.

SECTION 45.

Seamen engaged in any colony for a British ship must be engaged before a shipping master, or, if none, before an officer of customs (*g*).

Seamen engaged for a British ship in a foreign port must be engaged with the sanction of and before the British consul, if there be one at that port (*h*).

SECTION 46.

The master of a foreign-going ship must within forty-eight hours after its arrival at its destination in the United Kingdom, or on the discharge of the crew, whichever occurs first, deliver, under a penalty not exceeding 5*l*., the agreement to the shipping master there, who must give the master a certificate of such delivery.

No officer of customs may clear any foreign-going ship inwards without the production of such certificate (*i*).

SECTION 47.

In the case of home-trade vessels of above eighty tons, no agreement with her seamen shall extend beyond the following 30th of June, or 31st of December, or the arrival of the ship at her destination in the United Kingdom, or the discharge of her cargo there.

The master or owner of every such ship must, under a penalty not exceeding 5*l*., within twenty-one days after the 30th June and 31st December in each year, deliver to some

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(*g*) *Ib.* s. 159.
(*h*) *Ib.* s. 160.
(*i*) *Ib.* s. 161.

shipping master in the United Kingdom every agreement made within the preceding six months; and also produce to the shipping master, if such vessel carry passengers, the certificates of the said master and his mate.

The shipping master must then give the master or owner a certificate of such delivery and production. The vessel cannot be granted a clearance or transire till such certificate is produced to the officer of customs (*k*).

Section 48.

A seaman may prove the contents of his agreement without producing or giving notice to produce the agreement (*l*).

Every erasure or alteration in the agreement will be inoperative, unless attested by a shipping master or other public functionary to have been made with the consent of all parties (*l*).

Section 49.

Contracts with seamen are not liable to stamp duty (*m*).

Section 50.

The master must, at the commencement of the voyage or engagement, post up a copy of the agreement in a part of the ship accessible to the crew, under a penalty not exceeding 5*l*. (*n*).

(*k*) 17 & 18 Vict. c. 104, s. 162.
(*l*) *Ib.* ss. 163, 165.
(*m*) *Ib.* s. 2; 33 & 34 Vict. c. 97, sched.
(*n*) 17 & 18 Vict. c. 104, s. 166.

SECTION 51.

In every engagement of a seaman, or apprenticeship of an apprentice on board any ship, the owner is impliedly bound to use all reasonable means to insure the seaworthiness of the vessel for the voyage, and to keep her seaworthy during it (*o*); notwithstanding any agreement to the contrary.

SECTION 52.

If a seaman or apprentice, after making a binding engagement, desert his vessel, he becomes liable to a term of imprisonment, with or without hard labour, not exceeding twelve weeks, and to forfeiture of all his wages and of any effects left on board.

If he neglect or decline to join his ship, or if he absent himself without leave from the ship, without reasonable cause, he becomes liable to ten weeks' imprisonment with or without hard labour, and to forfeit two days' pay.

For wilful disobedience, he becomes liable to four weeks' imprisonment with or without hard labour, and to forfeit two days' pay.

For assaulting his master, or the mate, or for conspiring to neglect his duty, or for wilfully damaging the ship, or for embezzling or wilfully damaging her stores or her cargo, he becomes liable to twelve weeks' imprisonment with or without hard labour.

If he cause damage to the master or owner in consequence of his being convicted of smuggling, his wages, or part of them, may be retained in satisfaction thereof (*p*).

(*o*) 39 & 40 Vict. c. 80, s. 5.
(*p*) 17 & 18 Vict. c. 104, s. 243.

SECTION 53.

Any seaman or apprentice deserting from or refusing to join his ship, or absenting himself without leave, may be arrested by the owner, master, mate, ship's husband, or consignee, without a warrant, and be taken before some court having jurisdiction, which court can either imprison the seaman or order him to be conveyed on board, and to pay the costs out of his wages (*q*).

Provided that if he were arrested on insufficient grounds, the master, owner, mate, ship's husband or consignee who arrested him shall incur a penalty of 20*l*. The infliction of this penalty, however, shall bar any action for false imprisonment on account of the arrest (*q*).

If any seaman be imprisoned for desertion, or disobedience, or neglecting to join his ship, and if during such imprisonment, and before his engagement is at an end, his services are wanted on board, any justice may order him to be conveyed on board his ship, though the term of his imprisonment has not expired (*r*).

SECTION 54.

The seaman may refuse to join the vessel because it is unseaworthy, or complain to the Board of Trade that she is unsafe. Then the Board of Trade may detain the ship for the purpose of her being surveyed (*s*).

SECTION 55.

The seaman is in duty bound to exert himself *to the utmost* in the service of his vessel.

(*q*) 17 & 18 Vict. c. 104, ss. 246 and 247.
(*r*) *Ib.* s. 248.
(*s*) 39 & 40 Vict. c. 80, s. 6; and see ss. 10 and 11 as to costs.

Consequently a promise of extra pay as an inducement to extra work on his part (*e. g.* during a storm, or on account of the desertion of some of the crew) is *nudum pactum*, and therefore void (*t*).

SECTION 56.

If a seaman who has signed an agreement be improperly discharged before the commencement of the voyage, or before one month's wages are earned, he can recover compensation not exceeding one month's wages (*u*).

SECTION 57.

A seaman is entitled to his wages, provided he remain on board, though he cannot work through illness or hurt (*v*), unless caused by his own wilful act or default (*x*), or during an embargo, provided the vessel afterwards completes her voyage (*y*).

If a seaman die during the voyage for which he was engaged, his personal representatives may recover a proportionate part of his wages (*z*).

SECTION 58.

A seaman's right to wages and provisions commences either when he begins work, or at the date fixed in the

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(*t*) *Harris* v. *Watson*, 1 Peake, 102; *Harris* v. *Carter*, 3 E. & B. 559; *Frazer* v. *Hatton*, 2 C. B., N. S. 512.
(*u*) 17 & 18 Vict. c. 104, s. 167.
(*v*) Abbott, Pt. V. Ch. II. s. 1.
(*x*) 30 & 31 Vict. c. 124, s. 8.
(*y*) *Beale* v. *Thompson*, 4 East, 546; *Johnson* v. *Broderick*, 4 East, 566.
(*z*) *Armstrong* v. *Smith*, 1 Bos. & Pul. N. R. 299; but see *Cutter* v. *Powell*, 6 T. R. 320.

agreement for his commencement of work, or for his presence on board, whichever occurs first (*a*).

SECTION 59.

Any allotment by any seaman of any part of his wages during his absence, made at the commencement of the voyage, must be inserted in the agreement.

All allotment notes must be in the form prescribed by the Board of Trade (*b*).

SECTION 60.

Seamen discharged in the United Kingdom from a British foreign-going ship must be discharged and paid off by the master or owner before a shipping master, who has power to decide any question between them, which both parties agree by writing to submit to him (*c*). Seamen of home trading ships may be discharged and paid in a similar manner.

SECTION 61.

In any discharge and settlement of wages before a shipping master, the master or owner and each seaman must sign a mutual release of all claims in respect of the past voyage or engagement before the shipping master, who must attest it (*d*).

The master must also make and sign a report of the conduct and qualifications of the man discharged (*e*).

(*a*) 17 & 18 Vict. c. 104, s. 181.
(*b*) *Ib.* s. 168.
(*c*) *Ib.* ss. 170, 173 and 174.
(*d*) *Ib.* s. 175.
(*e*) *Ib.* s. 176.

SECTION 62.

If a seaman be discharged abroad, the master must both give him a certificate of discharge and furnish him with employment in a British vessel sailing to the port at which he was shipped, or pay his expenses home, in addition to paying him the wages due to him (*f*).

Wilfully leaving behind a seaman or apprentice during the voyage, is a misdemeanor (*g*).

If a master of a British ship discharge or leave behind a seaman or apprentice anywhere without the written sanction of a shipping master or the British consular officer, he commits a misdemeanor (*h*).

SECTION 63.

If a seaman or apprentice be improperly discharged or left abroad, his wages and the cost of providing for him and sending him home, shall be a charge on the ship, whether British or foreign, to which he belonged; and may be recovered by the Board of Trade (*i*).

SECTION 64.

A seaman or apprentice on board a British or colonial ship is entitled to his wages though the freight has not been earned; provided that if vessel were lost, it is not proved that he did not exert himself to the utmost to save the ship, its cargo, and stores (*k*).

(*f*) *Ib.* s. 205.
(*g*) *Ib.* s. 206.
(*h*) *Ib.* s. 207.
(*i*) *Ib.* s. 213.
(*k*) *Ib.* ss. 183 and 109.

But in the case of a foreign vessel, it seems that his wages will depend on freight being earned.

SECTION 65.

An agreement by a seaman to forfeit his wages if the vessel be lost, or to give up his lien on the ship or his action for his wages, or to abandon any right he may have in the nature of salvage, is void (*l*).

SECTION 66.

If the ship be wrecked or lost, or if the seaman be left on shore under a certificate of illness or incompetency, the seaman can only claim wages for the period he has served (*m*).

SECTION 67.

Discharge of a seaman for gross misconduct (*n*); or neglect or refusal to fight against pirates who have attacked the ship (*o*), will be met with forfeiture of his wages (*n*).

A naval court having jurisdiction over such offences, may discharge any seaman and order his wages to be forfeited to compensate the owner.

SECTION 68.

A seaman will forfeit his wages, if he desert from the vessel (*p*).

(*l*) 17 & 18 Vict. c. 104, s. 182.
(*m*) *Ib.* s. 185.
(*n*) *The Blake*, 1 Wm. Rob. Ad. R. 73.
(*o*) 22 & 23 Car. 2, c. 11, s. 7.
(*p*) 17 & 18 Vict. c. 104, ss. 243, 249, 250.

Leaving the vessel with the master's permission and refusing to return when ordered, is desertion (*q*).

But quitting the ship without leave for a temporary purpose, as to get legal advice as to his articles (*r*), or on account of improper treatment, *e. g.*, if the master fail to supply him with proper provisions (*s*), is not desertion.

Section 69.

If, in any proceeding relating to his wages, it is proved that the seaman or apprentice during the voyage was convicted by any competent tribunal of any offence and properly punished, the court trying the case may order a part of the wages due to him, not exceeding 3*l.*, to be applied in compensating the master for his costs in procuring such conviction (*t*).

Section 70.

A seaman will forfeit his wages by neglecting or refusing to work; but not by reason of his illness, unless caused by his own wilful act or default, or of his death, or of his entering the Queen's service (*u*).

Section 71.

A seaman or apprentice may sue in a summary manner before two justices of the peace, to recover wages due to him not exceeding 50*l.* (*x*).

(*q*) *The Bulmer*, 1 Hagg. A. R. 163; *The Pearl*, 5 Rob. Ad. R. 224.
(*r*) *The Westmoreland*, 1 Wm. Rob. Ad. R. 216; *Button* v. *Thompson*, L. R., 4 C. P. 330.
(*s*) *Edward* v. *Trevellick*, 4 E. & B. 59; *The Castilia*, 1 Hagg. A. R. 59.
(*t*) 17 & 18 Vict. c. 104, s. 251.
(*u*) *Ib.* ss. 186 and 214; 30 & 31 Vict. c. 124, s. 8.
(*x*) 17 & 18 Vict. c. 104, s. 188.

If the wages due are below 50*l.*, they cannot be recovered in the High Court of Justice; unless the owner of the ship becomes bankrupt or insolvent, or unless the vessel is arrested and sold by order of the court, or unless the justices refer the matter to the High Court, or unless neither the owner nor master is or resides within twenty miles of the place where the seaman or apprentice is discharged (*y*).

SECTION 72.

A seaman engaged for a voyage terminating in the United Kingdom may not sue in any court abroad for his wages, unless he is discharged abroad or proves such ill-usage on the part of the master, or by his authority, as to warrant reasonable apprehension of danger to his life (*z*).

SECTION 73.

If the wages due to the seaman or officer of a vessel exceed 50*l.*, they can be recovered in the Admiralty Division of the High Court of Justice (*a*).

The vessel may be arrested by the process of the court, as a security for the wages; and the master or the owners may be cited to answer for them (*b*).

If the wages claimed do not exceed 150*l.*, they may, if the parties agree, be sued for in the county court, or in an inferior court, having an admiralty jurisdiction (*c*).

An appeal will lie to the High Court if the amount decreed to be due exceeds 50*l.* (*c*).

(*y*) 17 & 18 Vict. c. 104, s. 189.
(*z*) *Ib.* s. 190.
(*a*) 36 & 37 Vict. c. 66, ss. 16 and 34.
(*b*) Abbott, Pt. V. Ch. IV. s. 3; *Bens* v. *Parr*, 2 Ld. Raym. 1206.
(*c*) 31 & 32 Vict. c. 71, ss. 3 and 31.

SECTION 74.

A seaman cannot recover his wages after the lapse of six years from when they became due, except in cases of disability (*d*).

SECTION 75.

A seaman can sue either the master or the owners of the vessel to recover his wages (*e*).

The onus of producing the agreement made between the seaman and his employer lies on the employer (*f*).

SECTION 76.

The master has the same rights, liens and remedies to recover his wages as a common seaman has (*g*).

The master has a lien on the vessel and freight for his wages and any necessary or usual disbursements made by him on account of the ship (*h*).

The master's lien will have priority over a mortgage (*i*), even though the master be a part owner (*k*), unless he be a party to the mortgage (*l*).

(*d*) 4 & 5 Anne, c. 3, ss. 17—19; 21 Jas. 1, c. 16, ss. 3 and 7.
(*e*) *The Salacia*, 32 L. J., Adm. 41; Abbott, Pt. V. Ch. IV. s. 3.
(*f*) 17 & 18 Vict. c. 104, s. 165; *Bowman* v. *Manzleman*, 2 Camp. 315.
(*g*) 17 & 18 Vict. c. 104, s. 191.
(*h*) 24 & 25 Vict. c. 10, s. 10.
(*i*) *The Mary Ann*, L. R., 1 A. & E. 8.
(*k*) *The Feronia*, L. R., 2 A. & E. 65.
(*l*) *The Jenny Lind*, L. R., 3 A. & E. 529.

CHAPTER VII.

CHARTER PARTIES.

Section 77.

Contracts by owners of goods or their agents with ship-owners or their agents for the conveyance of their goods in the latter's vessels are termed *contracts of affreightment.*

Contracts of affreightment are of two kinds, viz.: (1) contracts of affreightment by charter-party (*vide* sect. 78); and (2) contracts for conveyance of goods in a general ship (*vide* sect. 92).

Section 78.

A contract of affreightment by *charter-party* is a contract by which the owner of a ship or his agent lets the ship, or some principal part of it, to a merchant for the conveyance of his goods on a certain voyage to one or more places, in consideration of a certain sum being paid for the hire of the vessel (*a*).

The charter-party is generally under seal, though neither a deed, nor even a written instrument, is absolutely necessary, and generally executed by the owner of the ship, or by the master, if made abroad. If a charter-party made

(*a*) Abbott, Pt. IV. Ch. I.

by the master of the vessel be drawn up in the form of a deed, the owner of the ship is not liable on the covenants; unless the master had authority by deed thus to execute a charter-party (*b*).

An agent to secure himself against liability on the charter-party, should contract in the name of his principal, and sign "per procuration of ———."

Section 79.

A charter-party cannot be varied by parol evidence (*c*), though its terms may, as those of other mercantile instruments, be explained by custom of trade (*d*). Therefore if an agent execute the charter-party as owner, the real owner cannot sue on it (*e*). The terms of a charter-party may be liberally construed, provided that the construction must not be inconsistent with their obvious meaning.

Section 80.

The usual clause in a charter-party exonerating the owner of ship from liability, if prevented from performing his contract "by restraint of princes," will only cover an actual (*f*), and not a mere anticipated (*g*), restraint. It will only avail for the benefit of the owner, and not of the shipper.

(*b*) *Horsley* v. *Rush & Tolson*, cited in *Harrison* v. *Jackson*, 7 T. R. 207.
(*c*) *Gibbon* v. *Young*, 2 B. Moore, 224; *Thompson* v. *Brown*, 7 Taunt. 655.
(*d*) *Cuthbert* v. *Cumming*, 11 Exch. 405; *Greaves* v. *Legg*, 11 Exch. 642; *Russian Steam Navigation Co.* v. *Silva*, 13 C. B., N. S. 610.
(*e*) *Humble* v. *Hunter*, 12 Q. B. 310.
(*f*) *The San Roman*, L. R., 3 A. & E. 583; *Cunningham* v. *Dunn*, 3 C. P. D. 443.
(*g*) *Atkinson* v. *Ritchie*, 10 East, 530; *Crow* v. *Falk*, 8 Q. B. 467.

Another clause, extending the exoneration in the event of "dangers and accidents of the seas, rivers and navigation," only applies to a continuing obstacle to the completion of the voyage, and not to a temporary one (*h*).

Section 81.

If the freighter makes the usual covenant to load and unload within a certain time, and in default to pay a certain sum for each day's delay, termed *demurrage*, he must pay it, if he make default, even though the delay (which is also called demurrage) were unavoidable (*i*).

But if the delay be occasioned not by any default in loading the ship, but by her not being able to sail when loaded, as if she be detained by a frost or by an embargo, demurrage is not payable (*j*).

And if the owners of the ship interrupt the loading or unloading by their wrongful acts, they will not be entitled to demurrage (*k*).

The clause of demurrage should state whether the days mentioned in it are intended to be working or running days. If it does not, it will be understood to mean running days (*l*), unless some custom exist to the contrary, as in London (*m*).

(*h*) *The General Steam Navigation Co.* v. *Slipper*, 11 C. B., N. S. 493; *Schilizzi* v. *Derry and Others*, 4 E. & B. 873.

(*i*) *Barker* v. *Hodgson*, 3 M. & S. 267; *Thiis* v. *Byers*, 1 Q. B.-D. 244; *Waugh* v. *Morris*, L. R., 8 Q. B. 202; *Jones* v. *Adamson*, 1 Ex. D. 60.

(*j*) *Pringle* v. *Mollett*, 6 M. & W. 80.

(*k*) *Benson* v. *Blunt*, 1 Q. B. 870.

(*l*) *Brown* v. *Johnson*, 10 M. & W. 331.

(*m*) *Cochrane* v. *Retberg*, 3 Esp. 121.

SECTION 82.

If the freighter fail to load within the time agreed on, the master may of course sail (*n*). Then the freight payable will be reduced by any cargo which may have been embarked (*o*), though such cargo be not the one stipulated for; unless the shipper agreed to pay a certain sum as forfeiture, on his default. For then the shipowner can claim that sum, as well as whatever else the ship might earn, though these two sums together exceed the freight agreed on (*p*).

SECTION 83.

Breach by shipowner of his covenant in the charter-party to sail by a fixed day, will free the merchant from his obligation to provide a cargo; the sailing on or before the fixed day being a condition precedent (*q*). If the vessel quits her moorings and is ready to sail by the fixed day, and the master bonâ fide intends to commence the voyage at the stipulated time, the covenant is complied with, though the voyage be subsequently delayed by an unforeseen occurrence (*r*).

SECTION 84.

If the ship be described in the charter-party as being of a particular class, or in a particular position, it will amount to a warranty. Such warranty, however, will not be a

(*n*) *Bradford* v. *Williams*, L. R., 7 Exch. 259.
(*o*) *Puller* v. *Staniforth*, 11 East, 232.
(*p*) *Bell* v. *Puller*, 2 Taunt. 285.
(*q*) *Glaholm* v. *Hays*, 2 M. & G. 257.
(*r*) *Moir* v. *Royal Exch. Ass. Co.*, 4 Camp. 84; *Lang* v. *Anderdon*, 3 B. & C. 495; *Sharp* v. *Gibbs*, 1 H. & N. 801; *Gen. Steam Nav. Co.* v. *Sapper*, 11 C. B., N. S. 493.

continuing warranty, but only applies to the time when the charter-party was drawn up (*s*).

ILLUSTRATIONS.

1. Description of a ship in a charter-party as A1 is a warranty of her being so classed.

2. Description of a ship in a charter-party as "now at sea, having sailed three weeks ago," is a warranty. Therefore, if she did not sail then, charterer will be discharged (*t*).

SECTION 85.

Whether under the charter-party the possession of the vessel passes to the merchant, so as to make him owner *pro hâc vice*, depends on its terms. This is an important question, as the shipowner's lien for his freight may depend on it.

ILLUSTRATION.

The possession and temporary ownership of a vessel, let to the Transport Board, was held to pass to the king, on account of the services for which she was hired (*u*).

SECTION 86.

If a person carries his own goods in his own ship, there can be no freight, for a shipowner cannot contract with himself to pay freight; but only an increased value in the goods, due to the carriage of them.

Consequently, though a purchase or mortgage of a ship, as a general rule, carries freight which is being carried, it will not in this instance give any claim as against the shipowner for the carriage of his goods, nor will it give any lien on the goods for freight (*x*).

(*s*) *French* v. *Newgass*, 3 C. P. D. 163.
(*t*) *Ollive* v. *Booker*, 1 Exch. 416.
(*u*) *Trinity House* v. *Clarke*, 4 M. & S. 288.
(*x*) Per Cockburn, C. J., *Gumm* v. *Tyrie*, 4 B. & S. 680; 6 B. & S. 298.

But the shipowner will become liable for the freight, if he makes third persons who have advanced him money the consignees of such goods, and if the goods are by the bill of lading deliverable to their order (*y*).

SECTION 87.

If the charter-party does not provide to the contrary, the law of the state to which the ship belongs will govern as to the liability for sea damage and other accidents.

SECTION 88.

A charter-party is liable to a stamp duty of 6*d.*

It may be stamped within seven days on payment of the duty and of a penalty of 4*s.* 6*d.*, or within one month from execution on payment of the duty and a penalty of 10*l.*; but it cannot be stamped after one month from execution.

If the charter-party be executed abroad, it may be stamped within ten days from its arrival here, and before any one here has executed it (*z*).

SECTION 89.

Contracts of affreightment, besides being capable of rescission by the mutual consent of the parties, become *ipso jure* rescinded, if made illegal by a declaration of the government issued before their performance.

ILLUSTRATIONS.

If the country to which the vessel belongs declare war against the

(*y*) *Wegnelin* v. *Cellier*, L. R., 6 E. & I. Ap. 286.
(*z*) 33 & 34 Vict. c. 97, ss. 66—68.

state to which she is bound, before the performance of the contract, the contract of affreightment will be rescinded (*a*).

But if, instead of a declaration of war, an embargo only is imposed, there will be no rescission of the contract, but only a suspension of it (*b*); unless the embargo were meant as an act of hostility, and the object of the voyage has been lost in consequence of it (*c*).

Section 90.

The contract of affreightment will also *ipso facto* be rescinded, if the government prohibit the exportation of the various commodities of which the cargo is to be composed (*d*).

Section 91.

It is illegal to endeavour to enter a blockaded port.

After due notification of the blockade of a certain port, to sail with the intention of violating the blockade is illegal (*e*). But merely sailing to the port, without any premeditated intention of violating the blockade, is not illegal (*f*).

(*a*) *Reid* v. *Hoskins*, 4 E. & B. 979; *Esposito* v. *Bowden*, 7 E. & B. 763; *The Teutonia*, L. R., 3 Ad. & E. 394.

(*b*) *Hadley* v. *Clarke*, 8 T. R. 259; *The Patria*, L. R., 3 A. & E. 436.

(*c*) *Touteng* v. *Hubbard*, 3 B. & P. 291.

(*d*) See *Barker* v. *Hodgson*, 3 M. & S. 267.

(*e*) *The Neptunus*, 2 Rob. 110.

(*f*) *Medeiros* v. *Hill*, 8 Bing. 234, per Tindal, C. J.

CHAPTER VIII.

BILLS OF LADING.

Section 92.

When the owners and master of a ship agree with different merchants to convey their goods to the port to which she is going to sail, the contract is termed a contract for conveyance in a general ship.

The terms of the contract are regulated by the *bill of lading*, an instrument specifying the ship, goods, place of delivery, freight, primage and average, as well as the shipper and consignee.

Primage is a sum agreed to be paid by the freighter or the consignee to the master for his trouble in shipping the goods.

Section 93.

The effect of a contract for conveyance in a general ship is to make the owner liable as a common carrier; and he therefore becomes an insurer of the goods carried (*a*). Even though a special clause in the bill of lading free the shipowner from liability even in respect of the perils caused by the negligence of his servants, he is bound to provide a seaworthy vessel (*b*).

(*a*) *Nugent* v. *Smith*, 1 C. P. D. 19, 423.
(*b*) *Steel* v. *The State Line Steamship Co.*, 3 App. Ca. 72.

SECTION 94.

The master must sign the bill of lading, and deliver it up to the holder of the receipt given for the goods when they were shipped, on such receipt being given back to him (*c*).

This is the usual course. Consequently, a ship master will not make the owner liable by signing bills of lading for goods never shipped; even to a *bonâ fide* indorsee for valuable consideration (*d*).

SECTION 95.

Every bill of lading in the hands of a consignee or indorsee for value, representing goods to have been shipped on board a vessel, is conclusive evidence of such shipment as against the master or other person signing it, even though such goods or part of them have not been shipped; unless the holder of the bill of lading had actual notice at the time of receiving the same that the goods had not been shipped (*e*).

But as between the shipper and the shipowner, the bill of lading is not conclusive (*vide* Sect. 110) (*f*).

SECTION 96.

The bill of lading must have a 6*d*. stamp. It cannot be stamped after execution.

Executing an unstamped bill of lading is punishable with a fine of 50*l*. (*g*).

(*c*) *Shuster* v. *M'Kellar*, 7 E. & B. 704; *Hathesing* v. *Laing*, L. R., 17 Eq. 92.

(*d*) *Grant* v. *Norway*, 10 C. B. 665; *M'Lean* v. *Fleming*, L. R., 2 H. L. Sc. Ca. 128.

(*e*) 18 & 19 Vict. c. 111, s. 3; *Brown* v. *Powell Coal Co.*, L. R., 10 C. P. 562.

(*f*) *Bates* v. *Todd*, 1 Moo. & Rob. 106.

(*g*) 32 & 33 Vict. c. 97, sched., and s. 56.

SECTION 97.

If the bill of lading, instead of being made out for delivery to "A. B. or his assigns" as is usual, be made out for delivery "to —— order or to —— assigns," it will show that the consignor, especially if he be also an unpaid vendor, intends to reserve his right of property in the goods shipped, and his right to transfer them by indorsing the bill of lading. Then the goods will remain the consignor's (*g*), till he indorses the bill of lading and the indorsee accepts it; and he can sell them if payment of the price be refused (*h*); or alter their destination (*i*).

NOTES.—The usual form of a bill of lading is the following:—

J. S. No. 1 to 10. } "Shipped in good order by A. B., merchant, in and upon the good ship called the *Betsey Jane*, whereof C. D. is master, now riding at anchor in the river Thames, and bound for Valparaiso in Chili, ten bales containing thirty pieces of silk, marked and numbered as per margin, and are to be delivered in the like good order and condition at Valparaiso aforesaid (the act of God, the king's enemies, fire and all and every other dangers and accidents of the seas, rivers and navigation, of whatsoever nature and kind soever excepted) unto E. F., merchant there or his assigns, he or they paying freight for the said goods ——per piece freight, with primage and average accustomed. In witness whereof, the master or purser of the said ship hath affirmed to three bills of lading of this tenor and date; one of which bills being accomplished, the other two to stand void.

DATED at London, the 9th day of March, 1879."

SECTION 98.

If the bill of lading provide for the payment of freight or demurrage by the consignee, as it does occasionally,

(*g*) *Wait* v. *Baker*, 2 Exch. 1; *Hoare* v. *Dresser*, 7 H. L. Ca. 290; *Ogg* v. *Shuter*, 1 C. P. D. 47.
(*h*) *Ogg* v. *Shuter*, vide sup.
(*i*) *Ellershaw* v. *Magniac*, 6 Exch. 570 n.; *Ogg* v. *Shuter*, 1 C. P. D. 47.

the consignee must pay such freight or demurrage if he take the goods under the bill of lading, even though he has no valuable interest in the goods (*k*); and even though the delay were caused by the consignees of any other goods carried by the same ship (*l*). So other peculiar clauses introduced into bill of lading will bind the parties and all persons claiming under them.

Section 99.

Indorsement of a bill of lading of the usual kind by the consignee, either specially or in blank, and delivery of it to the indorsee (*m*), will transfer the property in the goods shipped to the latter from the date of its delivery (*n*). Though the consignee named in the bill of lading become insolvent before he has paid for the goods, nevertheless an assignment by him for value, and without the assignee being informed that they are not paid for, will convey the property in the goods to the assignee, and deprive the vendor of his right of stoppage *in transitu* (*o*).

But if the assignee had notice that the goods were not paid for, or did not give value, the consignor will not lose his right of stoppage *in transitu*. The forbearance to sue on, or the release of, an antecedent claim, is not a good consideration for an indorsement of a bill of lading, so as to defeat the right of an unpaid vendor to stop *in transitu* (*p*).

(*k*) *Scaife* v. *Tobin*, 3 B. & Ad. 523.

(*l*) *Porteus* v. *Watney*, 3 Q. B. D. 227, 534; *Straker* v. *Kidd*, 3 Q. B. D. 223.

(*m*) *Dracachi* v. *The Anglo-Eg. Nav. Co.*, L. R., 3 C. P. 190; *Hoare* v. *Dresser*, 7 H. L. Ca. 290.

(*n*) *Wright* v. *Campbell*, 1 Bla. 628; *Hibbert* v. *Carter*, 1 T. R. 745.

(*o*) *Lickbarrow* v. *Mason*, 2 T. R. 63, and 5 T. R. 683: *The Marie Joseph*, L. R., 1 P. C. 219; *Leask* v. *Scott Bros.*, 2 Q. B. D. 376.

(*p*) *Cuming* v. *Brown*, 9 East, 506; *Rodgers* v. *The Comptoir d'Escompte de Paris*, L. R., 2 P. C. 393.

SECTION 100.

An indorsee will take, subject to any condition inserted in the bill of lading or in the indorsement on it.

ILLUSTRATION.

If the goods are by the bill of lading only to be delivered, provided A. B. pay a bill of exchange, a subsequent indorsee cannot claim the goods till such condition be complied with (*q*).

SECTION 101.

Indorsement in blank of a bill of lading, and delivery to a *bonâ fide* transferee for value, by a person who has improperly got possession of it, or without the owner's authority, will transfer no property in or title to the goods (*r*), except in cases which fall within the Factors' Acts.

SECTION 102.

The consignee of goods named in a bill of lading, or the indorsee of a bill of lading, has the same rights of action, and is subject to the same liabilities in respect of such goods, as if the contracts contained in the bill of lading had been made with himself (*s*).

The consignee or indorsee can determine the liabilities he thus acquires by indorsing the bill of lading, and by so transferring his property in the goods (*t*).

(*q*) *Barrow* v. *Coles*, 3 Camp. 92.
(*r*) *Gurney* v. *Behrend*, 3 E. & B. 622; *Coventry* v. *Gladstone*, L. R., 6 Eq. 44.
(*s*) 18 & 19 Vict. c. 111, s. 1.
(*t*) *Smurthwaite* v. *Wilkins*, 11 C. B., N. S. 842.

Section 103.

Several parts of a bill of lading, signed by the master, are, as a general rule, delivered to the shipper. If such parts be indorsed to various parties, the first person to whom a part is validly indorsed is entitled to the goods (*u*).

Section 104.

By assigning the bill of lading the consignor can convey the property in the goods, so long as they continue in the hands of his agents (*x*), even though they may have been landed at their port of destination (*y*).

Illustration.

If the master sign a bill of lading for the delivery of the goods to A. B. or his assigns, and the consignor afterwards sends to C. D. another bill of lading, making the goods deliverable to him, C. D. will have a good title to them, unless some further act be done to vest them in A. B. (*z*).

(*u*) *Gurney* v. *Behrend*, 3 E. & B. 622; *Gilbert* v. *Guignon*, L. R., 8 Ch. 16.

(*x*) *Ellershaw* v. *Magniac*, 6 Exch. 570; *Gabarron* v. *Kreeft*, L. R., 10 Exch. 274.

(*y*) *Meyerstein* v. *Barber*, L. R., 2 C. P. 38, 661.

(*z*) *Mitchel* v. *Ede*, 11 Ad. & E. 888.

CHAPTER IX.

SHIPOWNER AND SHIPMASTER.

Section 105.

The ship must be seaworthy, *i. e.* tight and staunch, and furnished with a suitable crew and necessaries (*a*), though the charter-party does not expressly require it. For in every contract for conveyance of goods by sea, there is an implied warranty on the part of the shipowner that the vessel is seaworthy. The ship must also have a pilot on board, if such be necessary by usage or the law of the country (*b*).

The proper manifest, and all documents essential to the safety of the vessel, must be carried.

No false papers or contraband goods may be carried.

The warranty of seaworthiness dates from the time when the intended voyage commences, and the vessel must be *then* fit for sea, or there will be a breach of the warranty, even though the vessel was seaworthy when in her port of loading (*c*).

(*a*) *Cogge* v. *Bernard*, 2 Ld. Raym. 999; *Kopitoff* v. *Wilson*, 1 Q. B. D. 377; and sending a vessel to sea in so unseaworthy a condition as to endanger the life of any person is made a misdemeanor by 39 & 40 Vict. c. 80, s. 4.

(*b*) *Law* v. *Hollingsworth*, 7 T. R. 160; *Phillips* v. *Headlam*, 2 B. & Ad. 380.

(*c*) *Cohn* v. *Davidson*, 2 Q. B. D. 455.

SECTION 106.

If the ship is engaged to carry a cargo, in which the shipper has no interest whatever, he will not be liable if he omit to provide it, if the master does not inform him when the vessel is ready for it (*d*).

SECTION 107.

The vessel must sail at the fixed time. If no time be expressly agreed on, she must sail within a reasonable time (*e*).

On sailing the ship must proceed to the port to which she is destined without delaying unnecessarily, and without deviating (*f*); for if she deviates and is afterwards lost, the master and owners will be liable to the shipper, though the loss occur through the act of God or the king's enemies (*g*).

SECTION 108.

It is the duty of the master to do everything in his power to convey the goods in safety to their destination. With this object in view, he may, to raise money for repairs, mortgage the cargo, or even sell a part of it, if the remainder can in no other way be saved (*h*).

If, through some unexpected cause, the cargo is damaged, or cannot be conveyed to its destination in the original vessel, the master should tranship it for the place of its destination; or, if that be impracticable, he should return

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(*d*) *Fairbridge* v. *Pace*, 1 C. & K. 317.
(*e*) *M'Andrew* v. *Adams*, 1 Bing. N. C. 29; *The San Roman*, L. R., 5 P. C. 301.
(*f*) *The Express*, L. R., 3 A. & E. 597; *The Teutonia*, L. R., 4 P. C. 171.
(*g*) *Parker* v. *James*, 4 Camp. 112; *Davis* v. *Garrett*, 6 Bing. 716.
(*h*) *The Gratitudine*, 3 Rob. A. R. 240; *The Bonaparte*, 3 W. Rob. 298.

it, or deposit it in some place of safety; or he should consult the owner of the goods, if possible; or he may sell them, provided that he may only do so as a last resource. For if the master sell without absolute necessity, both he and his owners and the purchaser of the goods will be responsible to the merchant (*i*).

SECTION 109.

If the master mortgage the cargo, the shipowner must indemnify the merchant (*k*).

If he sell it, the shipowner must pay the merchant the sum which the goods would have realized at their destination; unless the merchant elect, as he has a perfect right to do, to take the amount they really sold for (*l*). In the latter case he may deduct it from the freight (*m*).

SECTION 110.

On the arrival of the vessel at its destination, the master must report it; show his papers to the proper officers; and deliver the cargo to the consignee specified in the bill of lading, or the indorsee of such, on the freight and any other charges—*e. g.* primage and average—being paid him (*n*).

If the bill of lading show on the face of it that the freight or any other charges have already been paid, the master is estopped from claiming them as against an assignee of the bill (*o*).

(*i*) Abbott, pt. iv. c. 6; *The Galam*, 33 L. J., Adm. 97; *The Australasian S. N. Co.* v. *Morse*, L. R., 4 P. C. 222; *Freeman* v. *East India Co.*, 5 B. & Ald. 617; *Morris* v. *Robinson*, 3 B. & C. 196.

(*k*) *Duncan* v. *Benson*, 1 Exch. 537; *Benson* v. *Duncan*, 3 Exch. 645.

(*l*) *Hallett* v. *Wigram*, 9 C. B. 580; *Atkinson* v. *Stephens*, 7 Exch. 567.

(*m*) *Campbell* v. *Thompson*, 1 Stark. 490.

(*n*) *Paynter* v. *James*, L. R., 2 C. P. 348.

(*o*) *Howard* v. *Tucker*, 1 B. & Ad. 712; *The Merc. & Exchange Bank* v. *Gladstone*, L. R., 3 Exch. 233; *Tamvaco* v. *Simpson*, L. R., 1 C. P. 363.

However, the bill of lading will not operate as an estoppel as between the consignor of the goods and the owner of the vessel. Therefore, the shipowner may prove that the goods, or some of the goods, specified in the bill of lading were never shipped (*p*).

Section 111.

The master may not detain the goods of one person as security for the charges due on the goods of another person; but he may detain any part of the goods consigned to the same party for the charges due on the whole (*q*).

Section 112.

The consignee is entitled to have a reasonable time and opportunity for fetching his goods from the vessel, unless some special custom prevail at the port (*r*). In the case of a transferable bill of lading not being produced within a reasonable time, the master may hand over the goods to a third person, to hold till it is produced (*s*).

Section 113.

If the owner of goods imported from abroad fails to make entry of or land them by the time specified in bill of lading or charter-party, the shipowner can make entry of and land them at any time after the time specified. If no time be

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(*p*) *Bates* v. *Todd*, 1 M. & Rob. 106; *Grant* v. *Norway*, 10 C. B. 665; *Brown* v. *Powell Duffryn S. C. Co.*, L. R., 10 C. P. 562.

(*q*) Abbott, pt. iv. c. 6, s. 11.

(*r*) *Bourne* v. *Gatliffe*, 7 M. & G. 850; *Catley* v. *Wintringham*, 1 Peake, N. P. C. 202.

(*s*) *Howard* v. *Shepherd*, 9 C. B. 297.

specified, the shipowner can, within seventy-two hours after the ship is reported, land the goods. The goods on being so landed must be placed in a warehouse or on a wharf.

If, at the time when the goods are so landed, the shipowner gives the warehouse keeper or wharfinger a written notice of his lien, then the goods may be detained both for the lien of the shipowner, as well as for the rent of the wharf or warehouse (*t*).

If the consignee do not pay the lien, or give security for it, the goods may, after the expiration of ninety days from the date of the deposit, be sold (*u*); or at an earlier date if the goods be of a perishable nature. The shipowner may then deduct the freight and any other sums due to him in respect of the said goods from the proceeds of the sale, remaining after the payment of any customs or excise duties due, of the expenses of the sale, and of the rent, rates and other charges due to the wharf or warehouse owner (*x*).

Section 114.

The ordinary exception in a bill of lading (*y*) as to damages and accidents will not cover injuries committed by rats, and the shipowner is liable for such injuries, though he has taken the precaution to put cats on board (*z*).

Section 115.

The owner of a sea-going ship, or of any share in it, is not liable for any loss or damage by fire of or to any goods on

(*t*) 25 & 26 Vict. c. 63, s. 67 and 68; *The Energie*, L. R., 6 P. C. 306.
(*u*) *Ib.* s. 73.
(*x*) *Ib.* s. 75.
(*y*) *Vide* Sec. 97.
(*z*) *Laveroni* v. *Drury*, 8 Exch. 166; *Kay* v. *Wheeler*, L. R., 2 C. P. 302.

board his vessel, unless caused by his actual fault or privity (*a*).

SECTION 116.

The owner of a sea-going ship or share in it is not liable to make good any loss or damage, occurring without his actual fault or privity, of or to any gold, silver, jewellery or precious stones on board his ship by reason of any robbery, embezzlement, making away with, or secreting thereof; unless the shipper has, at the time of shipping such articles, inserted in the bill of lading or otherwise declared in writing their true value and nature (*b*).

SECTION 117.

The owner of the ship or the master is not liable for any loss caused by the fault or incapacity of any qualified pilot in charge of the vessel within any limits within which the employment of a qualified pilot is compulsory by law (*c*).

If the damage or loss arise partly from the misconduct of the master or crew, the owner will be liable (*d*).

SECTION 118.

The owners of any ship, whether British or foreign, are only liable for any damage or loss caused without their

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(*a*) 17 & 18 Vict. c. 104, s. 503.

(*b*) *Id.*; *Gibbs* v. *Potter*, 10 M. & W. 70; *Williams* v. *The African S.S. Co.*, 1 H. & N. 300.

(*c*) 17 & 18 Vict. c. 104, s. 388; *The Hibernian*, L. R., 4 P. C. 511; *The G. S. N. Co.* v. *The B. & C. S. N. Co.*, L. R., 4 Exch. 238; *The Clyde Navigation Co.* v. *Barclay*, 1 App. Ca. 790; *The Princeton*, 3 P. D. 90.

(*d*) *The Diana*, 1 W. Rob. 131; *The City of Cambridge*, L. R., 5 P. C. 451; *The Batavier*, 9 Moore, P. C. Ca. 286.

fault or privity to any goods whatsoever on board or to ships or boats to an aggregate amount not exceeding 8*l.* for each ton of the ship's tonnage, whether or not there occur in addition loss of life or personal injury.

In respect of loss of life or personal injury they are not responsible in damages to an aggregate amount exceeding 15*l.* for each ton of ship's tonnage; whether such loss of life or personal injury be combined with loss of or damage to ships, boats or goods. However, they are liable to pay interest on that amount (*e*).

If there be several claims, the owner may apply to the Chancery Division of the High Court of Justice to determine the amount, and divide it among the claimants, and to stay all other proceedings (*f*).

The owners are liable in respect of every damage to or loss of goods, or every loss of life or personal injury, arising on different occasions, to the same extent as if no other damage or loss had occurred (*g*).

Section 119.

A shipmaster has a lien on the vessel or her freight for his wages, and also for any payments he has made on the vessel's account; and his claim is therefore preferred to that of a mortgagee, though he be a part-owner (*h*).

(*e*) 25 & 26 Vict. c. 63, s. 54; *The Franconia*, 3 P. D. 164; *Smith* v. *Kirby*, 1 Q. B. D. 131.

(*f*) 17 & 18 Vict. c. 104, s. 514; *Leycester* v. *Logan*, 26 L. J., Ch. 306.

(*g*) 17 & 18 Vict. c. 104, s. 506; *The Rajah*, L. R., 3 A. & E. 539.

(*h*) The Admiralty Act, 1861 (24 Vict. c. 10, s. 10); *The Mary Ann*, L. R., 1 A. & E. 8; *The Feronia*, L. R., 2 A. & E. 65.

SECTION 120.

A master's or mate's certificate can be cancelled or suspended by the Board of Trade in the following cases (*i*):—

(1) If he be reported after investigation as incompetent or guilty of gross misconduct or tyranny;

(2) If it is reported after any investigation that the loss or abandonment of, or injury to, any ship or loss of life was caused by his wrongful act or default;

(3) If he is superseded by order of any admiralty or naval court; and,

(4) If he has been convicted of any offence.

However, his certificate cannot be cancelled or suspended on account of a mere stranding, not followed by any material damage to the vessel or by any loss of life (*k*).

(*i*) 17 & 18 Vict. c. 104, s. 242.
(*k*) *Ex parte Story*, 3 Q. B. D. 166.

CHAPTER X.

BOTTOMRY AND RESPONDENTIA.

Section 121.

Bottomry is a contract entered into by a shipowner or his agent, whereby in consideration of a sum of money advanced for the use of the ship, the borrower agrees to repay the sum advanced with interest if the ship terminate her voyage successfully, and at the same time hypothecates the ship as security for the payment of the principal and interest.

If the instrument by which this is effected is a deed poll, it is called a bottomry bill; if it is in the form of a bond, it is termed a bottomry bond (*d*).

Section 122.

If the money be advanced not upon the ship, but on the cargo or goods on board her, the contract to repay the sum advanced and the stipulated interest is termed *respondentia*.

(*a*) For Forms of both Bottomry Bonds and Bills, see Abbott on Shipping—Appendix.

Section 123.

The terms *bottomry* and *respondentia* are also used to denote contracts to repay money borrowed, not on the ship or cargo, but on the mere hazard of the voyage. Such a contract is sometimes also termed fœnus nauticum, or usura maritima.

Illustration.

If A. advances to B., a merchant, 5000*l*, to be employed in some particular voyage, in consideration of B. agreeing to repay it with interest at 50 per cent. or at any other extraordinary rate, if the voyage in which it is to be used be safely concluded, the mere hazard of the voyage is the only security for the repayment of the 5000*l*. and interest.

Section 124.

There are two main differences between a bottomry or respondentia contract and a common loan. The one is that the lender's money is at hazard during the voyage (*b*). The other is that the lender on a bottomry or respondentia contract could always stipulate for any rate of interest, even before the repeal of the usury laws (*c*).

Consequently, if the ship or cargo be lost during the voyage, the lender on the bottomry or respondentia contract will lose his money. While, if it returns in safety he will be entitled to the principal and interest (however exorbitant) which was agreed on.

But if additional interest be stipulated for, by way of a penalty, if default be made in the payment of the bottomry

(*b*) *Stainbank* v. *Fenning*, 11 C. B. 51; *Stainbank* v. *Shepard*, 22 L. J., Exch. 341; *The Indomitable*, 5 Jur., N. S. 632.
(*c*) 2 Bl. Com. 457.

bond or bill and the interest thereon, it must not exceed the rate of 4 per cent.; and if a higher rate be stipulated for, only 4 per cent. can be recovered (*d*).

SECTION 125.

The ship, if it exist in specie, cannot be considered a total loss within the meaning of the bottomry bond or bill; though it be entirely disabled (*e*). The doctrine of constructive total loss does not apply to bottomry bonds or bills.

SECTION 126.

A shipmaster can borrow money on bottomry by hypothecating the ship and freight at a foreign port, in case of necessity and in furtherance of the voyage (*f*). He can also raise money on respondentia by mortgaging the cargo (*g*), if the money be absolutely necessary to the preservation of the ship and cargo, or to the completion of the voyage.

But the shipmaster may not borrow on bottomry or respondentia, if he can obtain the requisite sum of money on better terms, *e. g.*, on the shipowner's personal credit (*h*); or if he can communicate with the owner (*i*).

(*d*) *The Sophia Cook*, 4 P. D. 30.

(*e*) *Thompson* v. *R. E. A. Co.*, 1 M. & S. 30; *The Great Pacific*, 2 P. C. 516; *Broomfield* v. *Southern Insurance Co.*, L. R., 5 Exch. 192.

(*f*) Abbott, 156, 8th ed.; *The Osmanli*, 3 W. Rob. 198; *Benson* v. *Duncan*, 3 Exch. 644.

(*g*) *The Gratitudine*, 3 Rob. Adm. Rep. 240; *The Olivier*, 31 L. J. Adm. 137.

(*h*) *Heathorn* v. *Darling*, 1 Moore, P. C. Ca. 5; *Soares* v. *Rahn*, 3 Moore, P. C. Ca. 1.

(*i*) *The Bonaparte*, 3 W. Rob. Adm. Rep. 298; 8 Moore, P. C. Ca. 459; *The Oriental*, 7 Moore, P. C. Ca. 398; *The Hamburg*, 32 L. J. Adm. 161; *The Lizzie*, L. R., 2 A. & E. 254; *The Karnak*, 2 P. C. 505; *The Onward*, L. R., 4 A. & E. 38; *Kleinwort* v. *Cassa Marittima of Genoa*, 2 App. Cas. 156.

SECTION 127.

The creditor on a bottomry bill or bond, entered into by a shipmaster, will have no property in the ship hypothecated, but only a claim on it (*k*).

The creditor may avail himself of this claim on the arrival of the ship in England, by obtaining a warrant from the Admiralty Division of the High Court, to arrest the vessel, and by summoning all persons interested before the court.

The court has jurisdiction to decree a sale to be made of the vessel, and to divide the proceeds among the various claimants (*l*).

SECTION 128.

If several bottomry bills or bonds have been made at different periods of the voyage, and the proceeds of the sale of the vessel be insufficient to pay all the loans, the last in point of date will have priority of payment, the presumption being that had not the last loan been made, the other mortgagees would have lost their security (*m*).

SECTION 129.

No one can lend money on bottomry, who is, at date of the loan, a debtor in an equal or larger sum to the ship (*n*). If the lender be a debtor in a less amount, the bottomry bond will be invalidated pro tanto (*n*).

(*k*) Abbott, p. 154, 8th ed.
(*l*) *Ib.* p. 162.
(*m*) Abbott, p. 163, 8th ed.; *The Radamanthe*, 1 Dods. Adm. Rep. 201.
(*n*) *The Hebe*, 2 W. Rob. Adm. Rep. 146, 412.

SECTION 130.

A bottomry bond given to the consignee of the cargo is perfectly good; the borrowing being shown to have been necessary, and the transaction to have been fair and reasonable (*o*).

SECTION 131.

The master cannot hypothecate the ship to raise money to discharge a debt of his own.

But the master's misapplication of money, *bonâ fide* advanced when necessary to preserve the ship or to complete the voyage, will not deprive the lender of his right on the bottomry bill or bond (*p*).

SECTION 132.

For a bottomry bond or bill to be valid, the money must have been originally advanced on the security of the ship.

ILLUSTRATION.

If the money were originally raised, not on the security of the ship, but on the personal credit of the owner, and the bottomry bill or bond were subsequently drawn up in consequence of the owner's liability being questioned, the bond will be invalid; even though made before the vessel left the port at which the money was advanced (*q*).

(*o*) *The Alexander*, 1 Dods. Adm. Rep. 278.
(*p*) Abbott, p. 160, 161, 8th ed.
(*q*) *The Augusta*, 1 Dods. Adm. Rep. 283.

SECTION 133.

But if only part of the money had been thus previously advanced on the owner's personal credit, and the remainder had been subsequently advanced on the hypothecation of the vessel, the bottomry bond or bill will not be invalid *in toto*, but only to the extent of the sum advanced on the owner's personal credit (*r*).

Thus a bottomry bond may be good in part, though void as to the residue.

ILLUSTRATION.

A bottomry bond was given by the master at New York, as well for advances to obtain his discharge from arrest, at the instance of the consignees, on account of damage done on the voyage to part of the cargo, as for payment of the port duties and other disbursements necessary to enable ship to prosecute her voyage. The bond was held good to the extent of the sums advanced for necessary supplies and for payment of the port duties (*r*).

(*r*) *Smith* v. *Gould*, *Re The Prince George*, 4 Moore, P. C. Ca. 21.

CHAPTER XI.

FREIGHT.

Section 134.

The merchant who has hired a ship to *freight* must lade her within the specified time; or if no time were specified, within a reasonable time (*a*). If he make default, he will have to compensate the owner of the ship for any loss he sustains in consequence.

The merchant must also pay any charges due on his goods. Primage, average, demurrage, and freight are the usual charges.

Section 135.

The charterer must lade the vessel with the cargo agreed on (*b*).

If he place on board any contraband goods which may subject the vessel to forfeiture, or any goods of a dangerous character (*c*), without notice, he will become liable to a heavy penalty; and such goods may be thrown overboard or forfeited.

(*a*) *Matthews* v. *Lowther*, 5 Exch. 574; *Woolley* v. *Reddelien*, 5 M. & G. 316.

(*b*) *Moorson* v. *Page*, 4 Camp. 103; *Irving* v. *Clegg*, 1 Bing. N. C. 53; *Capper* v. *Forster*, 3 Bing. N. C. 938.

(*c*) *Brass* v. *Maitland*, 6 E. & B. 470; *Farrant* v. *Barnes*, 11 C. B., N. S. 553.

Section 136.

Freight means the price to be paid for the carriage of the goods to their destination (*d*), and not the price to be paid for receiving goods to be carried, or for carrying passengers (*d*). Therefore, if a merchant stipulate to pay a sum of money to a shipowner for taking goods on board, such sum will not be freight stricto sensu (*e*).

Consequently the freight will not become due if the carriage of the goods be not completed (*f*). But the shipowner will not forfeit his freight if the voyage is merely temporarily interrupted through no fault of his and afterwards completed (*g*), as, *e.g.*, in consequence of a capture by an enemy and a recapture (*h*), or by icebergs or pirates.

Section 137.

The amount of freight for goods sent in a general ship depends on the agreement between the merchant and the owner; or if none, on the value of the service performed, to be estimated in accordance with the usage of trade.

If a gross sum is to be paid for the whole or part of a ship under a charter-party, it will be due, even though a complete lading is not provided by the merchant, or though part of the goods be lost by excepted perils (*i*), *e.g.*, by fire or perils of the sea.

(*d*) *Lewis* v. *Marshall*, 7 M. & G. 729.

(*e*) *Blakey* v. *Dixon*, 2 B. & P. 321; Abbott, pt. 3, c. 7; *Byrne* v. *Schiller*, L. R., 6 Exch. 20, 319.

(*f*) *Mashiter* v. *Buller*, 1 Camp. 84; *Duthie* v. *Hilton*, L. R., 4 C. P. 138.

(*g*) Sometimes if not; *The Teutonia*, 4 P. C. 171.

(*h*) *The Race Horse*, 3 Rob. A. R. 101; *Beale* v. *Thompson*, 4 East, 546.

(*i*) *Robinson* v. *Knights*, L. R., 8 C. & P. 465; *Merchant Shipping Co.* v. *Armitage*, L. R., 9 Q. B. 99.

If the payment is stipulated to be at the rate of so much per ton, it must be calculated on the number of tons the ship or the part thereof chartered contains (*j*). If at so much per quarter or per ton of cubic feet of the goods, it must be calculated on the quantity of goods carried, not on the quantity discharged (*k*).

Section 138.

If the master of the ship improperly decline to take all the goods stipulated to be carried, he can nevertheless claim payment for the part he has carried, provided payment was agreed to be "per ton" or "per cask or bale" (*l*). So he can claim payment for such, if he does not sail according to agreement with the first wind or convoy (*m*), or if he deviates (*n*); the merchant, however, having a right of set-off for damages (*o*).

Section 139.

The shipowner takes the risk of the duration of the voyage, and he can only claim the freight stipulated for, whatever its length.

But the merchant will take it, if he agreed to pay so much per month or other aliquot part of the voyage; even

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(*j*) *Hunter* v. *Fry*, 2 B. & Ald. 421.

(*k*) *Gibson* v. *Sturge*, 10 Exch. 622; *Buckle* v. *Knoop*, L. R., 2 Exch. 125, 333; *aliter*, if it be "per quarter delivered," *Coulthurst* v. *Sweet*, L. R., 1 C. P. 649.

(*l*) *Ritchie* v. *Atkinson*, 10 East, 295.

(*m*) *Constable* v. *Cloberic*, Palm. 397; *Hall* v. *Cazenove*, 4 East, 477.

(*n*) *Bornmann* v. *Tooke*, 1 Camp. 376; and *Davidson* v. *Gwynne*, 12 East, 381.

(*o*) *Davidson* v. *Gwynne*, 12 East, 381; *MacAndrew* v. *Chapple*, L. R., 1 C. P. 643.

in the event of any unavoidable delay, *e.g.*, to repair the vessel (*p*).

SECTION 140.

If there is no charter-party, and the consignee has according to the bill of lading to pay freight, the shipper is not liable (*q*).

However, he would even in this instance be liable, if by the terms of the bill of lading the goods are consigned on the account of, and at the risk of, the shipper (*r*).

SECTION 141.

The shipowner may sue the consignee or indorsee of a bill of lading, if the latter obtained the goods in pursuance of a bill of lading imposing the payment of freight or demurrage on him (*s*). But the consignee or indorsee cannot be sued, if it appears on the face of the bill of lading that he was a mere agent (*t*).

The mere acceptance of the goods by the consignee or indorsee is not, per se, sufficient to impose charges on him in respect of them (*u*).

SECTION 142.

If a neutral ship laden with the goods of one of two belligerent powers be captured by the other, the ship must

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(*p*) *Havelock* v. *Geddes*, 10 East, 555; *Ripley* v. *Scaife*, 5 B. & C. 167.

(*q*) *Drew* v. *Bird*, M. & M. 156.

(*r*) *Dommett* v. *Beckford*, 2 N. & M. 374.

(*s*) *Renteria* v. *Ruding*, M. & M. 511; *Wegener* v. *Smith*, 15 C. B. 285; *Weguelin* v. *Cellier*, L. R., 6 H. L. Ca. 286.

(*t*) *Amos* v. *Temperley*, 8 M. & W. 798.

(*u*) *Wilson* v. *Kymer*, 1 M. & S. 157; *Coleman* v. *Lambert*, 5 M. & W. 502.

be restored, provided the goods might legally be carried by a neutral ship (*x*). But the goods may be confiscated by the law of nations, the captor paying the entire freight.

SECTION 143.

But if a hostile ship be captured with the goods of a neutral on board, the captor will only be entitled to freight on them, if he convey them to their destination (*y*).

SECTION 144.

If part only of the goods were delivered, in consequence of the default of the consignees, or the restraints of princes, then freight will be due on such as are delivered, if they were consigned by a general ship, or if the vessel were chartered for freight to be paid according to the quantity of the goods (*z*). It is a *vexata quæstio* whether freight is payable in such a case, if the vessel were chartered at a specific price for the voyage (*a*).

SECTION 145.

Freight pro rata itineris (for part of the voyage only), not being due under the charter-party, cannot be claimed by the shipowners, in the absence of a new contract, express or implied, to pay it (*b*). Such a new contract will be implied, if the ship be disabled during the voyage, and the owners of the cargo voluntarily receive the goods at an intermediate port, under circumstances from which it may

(*x*) *The Copenhagen*, 1 Rob. Adm. Rep. 289; Abbott, pt. iv. c. 9, s. 6.
(*y*) *The Fortuna*, 4 Rob. Adm. Rep. 278.
(*z*) *Christy* v. *Row*, 1 Taunt. 300.
(*a*) Smith's Merc. Law, p. 320, 9th edition.
(*b*) *Metcalfe* v. *The Britannia Ironworks Co.*, 1 Q. B. D. 613; 2 Q. B. D. 423.

be reasonably inferred, that they intended to dispense with their further carriage. Then the owners of the goods will be liable to pay freight *pro rata itineris* (*c*).

But freight *pro rata itineris* will not be payable, if no such voluntary acceptance and intention existed.

ILLUSTRATIONS.

If the master sell the cargo, with the object of preventing its loss through the perils of the sea, the shipowners cannot claim freight *pro rata itineris*.

If the goods be damaged on board, and therefore are landed and sold at an intermediate port, the shipowners cannot claim freight *pro rata itineris*, unless the consent of the owners of the goods was obtained to the sale (*d*).

SECTION 146.

If the goods after a trans-shipment, rendered necessary through the original ship being disabled, be conveyed in safety to their destination, the freight contracted for will be payable; though the freight on the second ship was at a lower rate (*e*).

SECTION 147.

If the vessel be prevented from sailing, her owners can, in the absence of an express agreement, claim no remuneration for the work already done, such as for stowing the goods on board; for the voyage does not commence till the ship has broken ground (*f*).

[ILLUSTRATION.

(*c*) Malyne, Ch. 21; *The Copenhagen*, 1 Rob. Adm. Rep. 289; *The Patria*, 3 L. R., A. & E. 436.

(*d*) *Acatos* v. *Burns*, L. R., 3 Ex. D. 282; *Hopper* v. *Burness*, 1 C. P. D. 137.

(*e*) *Skipton* v. *Thornton*, 9 Ad. & E. 314; *Matthews* v. *Gibbs*, 3 E. & E. 282.

(*f*) *Curling* v. *Long*, 1 B. & P. 634.

ILLUSTRATION.

A ship bound for London, after taking in her cargo, but *before breaking ground*, was cut out of her port of lading in Jamaica by a French privateer, but afterwards recaptured and carried into another port in Jamaica. There the cargo was sold by the order of the Court of Admiralty for the benefit of the freighters. Held, that the owners of the ship were not entitled to any part of the freight (*g*).

SECTION 148.

The shipowner has a lien on the cargo for the freight, unless he has waived it, or by the charter-party giving up possession of the ship to charterer. But if the freight be payable in advance, he has no lien; for money payable in advance is not freight *stricto sensu*, though often called so, and consequently owner can have no lien for it as freight (*h*).

The shipowner has no lien for dead freight *or* demurrage, unless by special agreement (*i*).

Dead freight is defined (*i*) to be simply an unliquidated compensation recoverable by the shipowner from the freighter for deficiency of cargo.

The shipowner, whether he has a lien or no, can sue the freighter on his contract to pay freight (*k*).

SECTION 149.

If, on his ship being disabled, the master detain the cargo for a reasonable time till the vessel is repaired; or

(*g*) *Curling* v. *Long*, 1 B. & P. 634.
(*h*) *How* v. *Kirchner*, 11 Moore, P. C. Ca. 21; *Kirchner* v. *Venus*, 12 Moore, P. C. Ca. 361.
(*i*) *M'Lean* v. *Fleming*, L. R., 2 H. L. Sc. 128; *Gray* v. *Carr*, L. R., 6 Q. B. 522.
(*k*) *Tapley* v. *Martens*, 8 T. R. 451; *Shephard* v. *De Bernales*, 13 East, 565.

if he forward the cargo by another vessel, he will not lose the freight.

But if he does not trans-ship and forward the cargo (*l*), or if the cargo is detained beyond a reasonable time, all right to the freight will be entirely lost.

ILLUSTRATION.

Under a charter-party freight was to be paid at so much per ton "on a right and true delivery of the homeward-bound cargo" from Honduras Bay to London. The ship and cargo, after capture and recapture, were wrecked at St. Kitts, to which they were carried by the recaptors. The Vice-Admiralty Court there directed the cargo to be sold on the application of the master, acting *bonâ fide* for the benefit of all interested, but without orders from any. Held, freight *pro rata itineris* was not payable (*m*).

(*l*) *Hunter* v. *Prinsep*, 10 East, 378; *Liddard* v. *Lopes*, 10 East, 526; *Osgood* v. *Groning*, 2 Camp. 466.

(*m*) *Hunter* v. *Prinsep*, 10 East, 378.

CHAPTER XII.

SALVAGE.

Section 149.

Salvage is a compensation to be made by the shipowner or merchant, to other persons by whose assistance the ship or the cargo was saved from impending peril, or recovered after actual loss (*a*).

If the cargo be owned by several merchants, and only part of it be rescued, the owners of the part lost are not liable to pay any of the sum awarded as salvage (*b*).

Salvage may be due on account of a rescue from either the perils of the sea, or from the power of an enemy. But there can be no claim to salvage, where the attempt to salve has not been successful (*c*).

Section 150.

The crew or passengers of the vessel rescued, cannot claim salvage for any assistance they may have rendered

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(*a*) Abbott, pt. vi. c. 2; *The Cargo ex Schiller*, 2 P. D. 145; *The Sarah*, 3 P. D. 39.
(*b*) *The Cargo ex Sarpedon*, 3 P. D. 28.
(*c*) *The Hawkins*, 31 L. J., Adm. 46.

in preserving the vessel; in the absence of any special circumstances (*d*).

But the crew of another ship, belonging to the same owner, can claim salvage, provided that the services performed are not within the contract which they originally entered into with the owners, and for which they would be paid by their ordinary wages (*e*).

Section 151.

The salvor has a lien on goods rescued from perils of the sea. And, if the shipowner pays the salvage, he will have a lien on them for it (*f*).

In the event of a salvage of wreck occurring in the United Kingdom, the salvor must inform the receiver appointed by the Board of Trade to superintend matters relating to wreck. Such receiver has to take charge of and detain the ship and goods, till the amount of the salvage is paid, or security given for its payment (*g*), or till process has been issued by some Court having jurisdiction for their detention.

If the goods salved be so damaged or perishable, or if they be not worth the cost of warehousing, the receiver may sell them immediately, and hold the proceeds of the sale subject to the same claims as the goods sold would have been liable if they had not been sold (*g*).

The receiver can sell the property salved, if the salvage money be not paid within twenty days after it is admitted,

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(*d*) *The Le Jonet*, L. R., 3 A. & E. 556.
(*e*) *The Sappho*, L. R., 3 A. & E. 142; 3 P. C. 690.
(*f*) *Briggs* v. *The Merchant Traders' Association*, 13 Q. B. 167.
(*g*) 17 & 18 Vict. c. 104, ss. 439 to 457, and 468.

or decided by the Court, to be due, and pay the salvage money out of the proceeds (*h*).

SECTION 152.

Generally the Admiralty Division of the High Court will, on action brought, fix the amount of salvage due to the rescuers; and take care of the wreck and goods *pendente lite* (*i*).

The County Courts have the same powers in all cases where the value of the property rescued does not exceed £1000; or where the amount of salvage claimed does not exceed £300; or where the parties agree by a written memorandum signed by them or their agents that the County Court shall have jurisdiction to decide as to the claim (*j*).

SECTION 153.

If the sum claimed as salvage is not above £200, or if the property rescued does not exceed £1000, the salvage can be summarily adjusted by two justices of the peace, resident near the wreck, or by a stipendiary magistrate, or County Court judge (*k*).

Even if above £200 be claimed as salvage, the dispute may be thus summarily disposed of if the parties consent.

Against the award an appeal lies to the High Court, if above £50 be claimed as salvage, and if within ten days after the award the appellant gives the justices notice of his intention to appeal, and if within twenty days from such award he commences his appeal (*l*).

(*h*) 17 & 18 Vict. c. 104, s. 469.
(*i*) *Ib.* ss. 468, 476; 24 & 25 Vict. c. 10.
(*j*) 31 & 32 Vict. c. 71, ss. 1 & 2; *The Glannibanta*, 2 P. D. 45.
(*k*) 17 & 18 Vict. c. 104, s. 460; 25 & 26 Vict. c. 63, s. 49.
(*l*) *Ib.* s. 464.

Section 154.

The owner of property recaptured from an enemy is entitled to it, on paying the amount due as salvage, no regard being paid to the amount of time which elapsed between the capture and recapture (*m*).

The same rule applies to the allies of Great Britain, whose vessels have been, after being captured by the enemy, recaptured by British ships; provided they treat British property on the same principle (*n*).

Section 155.

The amount of salvage payable on recapture from an enemy has been regulated at different periods by statutes. It is generally calculated at one-eighth of the value of the property recaptured, if rescued by a vessel of the Royal Navy; and at one-sixth if rescued by a private ship (*o*).

Section 156.

If the owners of the rescued goods or vessel specially agree, in consideration of their property being rescued, to pay to the salvors a certain sum as salvage, the agreement must be equitable, and an exorbitant sum must not be demanded; otherwise the agreement will not be enforced (*p*).

(*m*) 13 Geo. 2, c. 4, s. 18; 17 Geo. 2, c. 34, s. 20; 29 Geo. 2, c. 34, s. 24.

(*n*) *The Santa Cruz*, 1 Rob. Adm. Rep. 63.

(*o*) 43 Geo. 3, c. 16, ss. 39 and 41; 45 Geo. 3, c. 72, s. 7; 48 Geo. 3, c. 132; 55 Geo. 3, c. 60, s. 5.

(*p*) *The Medina*, 1 P. D. 272; 2 P. D. 5.

CHAPTER XIII.

AVERAGE.

Section 157.

General average, is a contribution by the owners of the ship, freight and cargo respectively to compensate the owner of a particular part of the ship or cargo whose property was sacrificed for their common good (*a*); as by jettison. The whole adventure must have been in imminent peril of being lost, for a general average to exist; for the sacrifice must have been for the general good (*b*). The sacrifice must also be contrary to the ordinary duty of the ship master, or owner, and intentional.

Section 158.

For general average the actual loss of the subject matter, in respect of which it is claimed, or injury to it, is not an essential element. But general average may be for any expense, incurred with relation to the subject matter, for the general good; provided it was voluntarily incurred.

(*a*) *Wilson* v. *Bank of Victoria*, L. R., 2 Q. B. 203; *Harrison* v. *Bank of Australasia*, L. R., 7 Exch. 39; *Shepherd* v. *Kottgen*, 2 C. P. D. 585.

(*b*) *Job* v. *Langton*, 6 E. & B. 779; *Oppenheim* v. *Fry*, 5 B. & S. 348.

A jettison of cargo will be the subject of a general average. But a jettison of cargo stowed on deck will not be, unless it is customary to carry such cargo on deck, or the shipowner stipulated for leave to carry it on deck (*c*).

If the ship be so disabled, that repairs are absolutely necessary, and the cargo must be unloaded for such repairs to be made, the cost of unloading it will be the subject of a general average (*d*).

Masts and sails destroyed through the necessity of carrying an extraordinary press of canvas, are not subjects of general average; for the loss was not voluntarily incurred (*e*). But if they were cut away and thrown overboard or destroyed, for the sake of preserving the ship and cargo, they would be the subjects of general average (*f*).

ILLUSTRATION.

The coals ran short, and the captain therefore burnt the spars and part of the cargo in order to work the pumps, the ship having sprung a leak. The spars and cargo so burnt are the subjects of a general average (*g*).

SECTION 159.

The wages and provisions of the seamen, while the repairs are being executed, are not the subject of either general average, or particular average; but must be borne exclusively by the shipowner (*h*).

(*c*) *Ross* v. *Thwaite*, 1 Park. Ins. 26; *Da Costa* v. *Edmunds*, 4 Camp. 142.
(*d*) *Plummer* v. *Wildman*, 3 M. & Sel. 482.
(*e*) *Covington* v. *Roberts*, 2 N. R. 378.
(*f*) *Birkley* v. *Presgrave*, 1 East, 220.
(*g*) *Robinson* v. *Price*, 2 Q. B. D. 91, 295.
(*h*) *Power* v. *Whitmore*, 4 M. & S. 141; Arnould, Mar. Ins. p. 842.

SECTION 160.

If the ship-master sell or mortgage part of the cargo to pay for repairs during the voyage, that part will not be the subject of general average (*i*).

SECTION 161.

Any injury to the ship, the ammunition lost, or the cost of healing the seamen wounded in a fight with an enemy, or with pirates, will not be re-imbursed by a general average (*j*).

SECTION 162.

All that is ultimately saved out of the adventure, including the ship, freight, cargo, contributes to the general average. But only articles which are comprised in the term merces, contribute.

Consequently, the clothes of the passengers, and all kinds of provisions are not liable to contribute (*k*), even where the ship only carries passengers and no other cargo.

Cargo stowed on deck is liable to contribute, though it is not contributed for.

SECTION 163.

The shipowners contribute according to the net value of the ship and freight at the termination of the voyage, the cost thereof being deducted, but they do not contribute in respect of freight paid in advance.

(*i*) *Hallett* v. *Wigram*, 9 C. B. 580; *Benson* v. *Chapman*, 2 H. L. Ca. 696.
(*j*) *Taylor* v. *Curtis*, 6 Taunt. 608.
(*k*) *Brown* v. *Stapyleton*, 4 Bing. 119.

The charterer contributes for freight paid in advance (*l*).

The seamen never contribute on account of their wages, except in the single instance of the ransom of the ship (*m*).

Section 164.

If the average is calculated at the ship's place of destination, the goods are valued for average at the price they would have fetched there. And the owners must contribute according to the value put on them.

But if the average is calculated at the port of lading, they will be valued at the invoice price (*n*).

Section 165.

The shipowners have a lien for any general average due by the cargo (*o*).

But the owners of the goods have no lien for general average, when due by the ship (*p*).

A consignee of goods (not the owner) receiving them under a bill of lading, is not liable for general average, unless the bill of lading made the payment of general average a condition precedent to the delivery of the goods (*o*).

Section 166.

A foreign adjustment of general average, will bind all the parties to the adventure, and also the underwriter (*q*).

(*l*) *Frayes* v. *Wormes*, 19 C. B., N. S. 159.
(*m*) Abbott, pt. 6, c. 1, s. 11.
(*n*) Abbott, pt. 6, c. 1.
(*o*) *Scaife* v. *Tobin*, 3 B. & Ad. 528, per Lord Tenterden, C. J.
(*p*) *The North Star*, 29 L. J., Adm. 73.
(*q*) Arnould, Mar. Ins. 873; *Walpole* v. *Ewer*, 2 Park, Ins. 629; *Newman* v. *Cazalet*, 2 Park, Ins. 630.

SECTION 167.

Beside general average there exist two other kinds of average, particular and petty.

Particular average is the loss accidentally and proximately caused by the perils insured against, to the subject matter of the insurance. The loss in particular average, instead of falling on all interested in the voyage, as in general average, falls solely on the owner of the property lost (*r*).

SECTION 168.

The term *petty average* includes the small charges, always necessarily incurred in voyages of considerable duration, and defrayed by the master, for the purposes of the ship and cargo; such as pilotage, tonnage and anchorage money (*r*).

Of course, if the charges be incurred for any extraordinary purposes, or to save the ship and cargo, they will be the subjects of a general average.

The underwriter is never liable for petty averages.

(*r*) Arnould, Mar. Ins. pt. 3, c. 5.

BOOK II.

MARITIME INSURANCE.

CHAPTER I.

INSURANCE, INSURERS AND INSURED.

SECTION 169.

INSURANCE is a contract, by which one party in consideration of a premium, undertakes to indemnify another party against a particular event (*a*).

The instrument embodying this contract is termed a policy of insurance.

Maritime or Marine Insurance occurs when a merchant pays a premium to others to insure against certain risks, his goods or vessel, from one port or district to another port or district, on the terms they mutually agreed on.

The party who agrees to indemnify, is termed the insurer, and after subscribing the policy, he is called the underwriter.

The party idemnified against the particular event, is termed the insured or assured.

(*a*) 2 Bl. Com. 458.

SECTION 170.

Any individual, partnership or corporation may be either the insurers or the insured (*b*). Provided that an alien enemy during war cannot effect a valid policy (*c*); unless his vessel were protected by the royal licence (*d*). Provided also, that a British subject trading under the protection of and for the advantage of a hostile country, cannot avail himself of a marine policy made in this country (*e*).

SECTION 171.

If a broker be employed, the broker is liable to underwriters for the payment of the premium; and the insured to the broker. In such a case the broker is not merely an agent, but a principal to receive the premium from the insured, and to hand it to the underwriter (*f*).

SECTION 172.

The broker has a lien on a policy he is employed to effect, for any premiums he has paid thereon, and for his commission, and for the general balance of his insurance account. The lien will be lost by his handing over the policy to his employer, or by his wrongfully disposing of it. It however will revive, except in a few cases, if the policy comes again into his possession (*g*).

(*b*) The members of Lloyds, with whom nearly all London policies are effected, are incorporated and regulated by 34 Vict. c. 21.
(*c*) *Brandon* v. *Nesbitt*, 6 T. R. 23; *Bristow* v. *Towers*, 6 T. R. 35.
(*d*) *Kensington* v. *Inglis*, 8 East, 273.
(*e*) *M'Connel* v. *Hector*, 3 B. & P. 113; *Willison* v. *Patteson*, 7 Taunt. 438.
(*f*) *Power* v. *Butcher*, 10 B. & C. 329; 2 Park, Ins. 811.
(*g*) Arnould, Mar. Ins. p. 1, c. 4.

SECTION 173.

Assurances on a British ship, or goods on board it; "interest or no interest," or "without further proof of interest than the policy," or by way of gaming or wagering, or "without benefit of salvage to the insurer," are void (*h*). Such assurances are termed *wager policies*. Provided that wager policies may be made on British privateers, fitted out solely to cruise against enemies (*i*); and on all foreign ships (*k*).

SECTION 174.

It being thus necessary that the insured be interested in the subject matter of the policy, he cannot sue on the policy if before the loss he has assigned his interest in the thing insured to another person.

ILLUSTRATION.

If after effecting a policy of insurance on a vessel, the insured sell it, he cannot sue on the policy for any loss or damage it may sustain after the assignment, except as a trustee for the assignee, in cases where the policy was expressly or impliedly assigned to the assignee of the vessel (*l*).

SECTION 175.

If a person be interested in a thing, he may insure it to the extent of such interest; unless the interest be based on an illegal or void contract.

A mortgagee of a vessel can insure it.

(*h*) 19 Geo. 2, c. 37, s. 1; *Allkins* v. *Jupe*, 2 C. P. D. 375.
(*i*) *Ib.* s. 2.
(*k*) *Thelluson* v. *Fletcher*, 1 Doug. 315; *Nantes* v. *Thompson*, 2 East, 385.
(*l*) *Powles* v. *Innes*, 11 M. & W. 10.

The owner of a ship may insure not only the ship, but also the freight, either for the whole voyage or for part of it (*m*), including the advantage he would derive from carrying his own goods in his own vessel (*n*).

The shipper of the cargo may, besides insuring the goods shipped, also insure the amount of the profits he expects to realize. But profits on goods never actually shipped, will not be an insurable interest (*o*).

But an insurance effected on the expected profits of a cargo, to which the insured is entitled under a contract void by the Statute of Frauds, is invalid (*p*).

If the voyage insured be prohibited by law, or the cargo insured is intended to be forwarded to an enemy without the royal licence (trading with an enemy without the king's licence being illegal), the policy will be avoided (*q*).

Commissions on sales of the merchandise shipped, may be insured; and also advances on bottomry or respondentia can be insured by the lender (*r*).

The wages of the master of a ship can be insured; but not the wages of the seamen or officers (*s*).

(*m*) *Montgomery* v. *Eggington*, 3 T. R. 362; *Taylor* v. *Wilson*, 15 East, 324; *Michael* v. *Gillespy*, 2 C. B., N. S. 627. If part of the freight be pre-paid, he may insure the remainder, see *Allison* v. *The Bristol Marine Insurance Co.*, 1 App. Cas. 209.

(*n*) *Flint* v. *Fleming*, 1 B. & Ad. 45; *Devaux* v. *J'Anson*, 5 Bing. N. C. 519.

(*o*) *Anderson* v. *Morice*, L. R., 10 C. P. 58, 609; *M'Swinney* v. *Royal Exch. Assurance Co.*, 14 Q. B. 646 and 634.

(*p*) *Stockdale* v. *Dunlop*, 6 M. & W. 224.

(*q*) *Campden* v. *Anderson*, 6 T. R. 723; *Johnson* v. *Sutton*, 1 Doug. 254; *Delmada* v. *Motteux*, Park, 357; *Potts* v. *Bell*, 8 T. R. 548; *Esposito* v. *Bowden*, 7 E. & B. 763.

(*r*) *Glover* v. *Black*, 3 Burr. 1394.

(*s*) *Duff* v. *Mackenzie*, 3 C. B., N. S. 16; *Webster* v. *De Tastet*, 7 T. R. 157.

SECTION 176.

An assignee of a policy must, in order to recover on it, be the assignee of both the insurable interest covered by it, and of the policy itself (*t*).

The assignee of a policy may sue on it in his own name (*u*).

The policy may be assigned either in the form prescribed by 31 & 32 Vict. c. 86, s. 2, sched.; or by indorsement; or by mere delivery, provided such delivery be accompanied by the intention to assign the policy.

After an absolute assignment, the original assured will have no right of action on the policy; not even as an agent or trustee (*x*).

But the assured will not lose his right to recover, by merely pledging the bill of lading as a collateral security (*y*).

(*t*) Arnould, pt. 1, c. 3.
(*u*) 31 & 32 Vict. c. 86, s. 1.
(*x*) *Powles* v. *Innes*, 11 M. & W. 10; *North of England Oil-cake Co.* v. *Archangel Mar. Ins. Co.*, L. R., 10 Q. B. 249; et vide Section 174.
(*y*) *Hibbert* v. *Carter*, 1 T. R. 745.

CHAPTER II.

THE POLICY.

SECTION 177.

AN ordinary policy of maritime insurance is in the following form:—

S. G.

£

Delivered the day of 187 No.

BE IT KNOWN THAT *as well in own names as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all, doth make assurance and cause and them, and every of them, to be insured, lost or not lost, at and from . Upon any kind of goods and merchandises, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the , whereof is master under God, for this present voyage, or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called; beginning the adventure upon the said goods and merchandises from the loading thereof aboard the said ship, upon the said ship, &c. and so shall continue and endure, during her abode there, upon the said ship, &c. And further, until the said ship, with all her ordnance, tackle, apparel, &c., and goods and merchandise whatsoever, shall be arrived upon the said ship, &c. until she hath moored at anchor twenty-fours hours in good safety; and upon the goods and merchandises, until the same be there discharged and safely landed. And it shall be lawful for the said ship, &c. in this voyage, to proceed and sail to and touch and stay at any ports or places whatsoever without prejudice to this insurance. The said ship, &c. goods and merchandises, &c. for so much as concerns the assured, by agreement between the assured and the assurers in this policy, are and shall be valued at*

Touching the adventures and perils which we the assurers are contented to bear and do take upon us in

this voyage: they are of the seas, men-of-war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and counter-mart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever; barratry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said goods, and merchandises, and ship, &c. or any part thereof. And in case of any loss or misfortune, it shall be lawful to the assured, their factors, servants, and assigns, to sue, labour, and travel for, in and about the defence, safeguard, and recovery of the said goods and merchandises, and ship, &c. or any part thereof, without prejudice to this insurance; to the charges whereof we the assurers will contribute each one according to the rate and quantity of his sum herein assured. And it is agreed by us the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in *Lombard Street*, or in the *Royal Exchange*, or elsewhere in *London*. And so we the assurers are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods, to the assured, their executors, administrators and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of

IN WITNESS *whereof we the assurers have subscribed our names and sums assured in* London.

N.B.—Corn, fish, salt, fruit, flour, and seed, are warranted free from average, unless general, or the ship be stranded—sugar, tobacco, hemp, flax, hides and skins, are warranted free from average, under five pounds *per cent.*, and all other goods, also the ship and freight are warranted free from average, under three pounds *per cent.* unless general, or the ship be stranded (*a*).

SECTION 178.

Marine policies consist of two classes, open and valued. In an *open policy*, the value of the thing insured is not included in the policy, and consequently in the event of a loss has to be proved at the trial.

In a *valued policy*, the value of the subject matter of the insurance is fixed by the parties, and included in the

(*a*) This is the form authorized by 30 & 31 Vict. c. 23, s. 5, and Sched. E.

policy. The value so included is conclusive on both insurer (*a*), and insured (*b*).

If the insured fraudulently value his interest at too high a rate, to cheat the underwriters, he cannot recover even to the extent of his real interest; for the fraud entirely vitiates the contract (*c*).

Section 179.

Every contract of maritime insurance must be set forth in the policy. The policy must specify the risk, the names of the subscribers or underwriters, and the sums insured (*d*).

Therefore no action can be maintained on a slip (*e*).

The amount of the premium is usually mentioned in the policy; though it is not now essential to do so (*f*).

Section 180.

If the name or names of one or more of the persons interested in the insurance, or of the consignors or consignees, or of the agent in Great Britain who effected the policy, or of the person who gives the order to the agent to effect the insurance, be not inserted in it, the policy is void (*g*). Thus, policies in blank are void.

(*a*) *Lewis* v. *Rucker*, 2 Burr. 1171; *Irving* v. *Manning*, 1 H. L. Ca. 287; *Lidget* v. *Secretan*, L. R., 6 C. P. 616.
(*b*) *North of England Ins. Ass.* v. *Armstrong*, L. R., 5 Q. B. 244.
(*c*) *Haigh* v. *De la Cour*, 3 Camp. 319.
(*d*) 30 & 31 Vict. c. 23, s. 7.
(*e*) *Fisher* v. *The Liverpool Marine Insurance Co.*, L. R., 9 Q. B. 418.
(*f*) 30 & 31 Vict. c. 23, s. 7, and Sched. E.
(*g*) 28 Geo. 3, c. 56; *Wolff* v. *Horncastle*, 1 B. & P. 316; *Bell* v. *Janson*, 1 M. & S. 201.

Section 181.

The thing insured must be accurately described in the policy (*h*). But the nature of the interest of the insured in it need not be expressed (*i*).

Thus, an insurance on goods and merchandise will not cover profits or commissions on their sale. Neither will it cover advances on bottomry or respondentia (*k*).

If the policy be on "goods," only goods of ordinary risk will be included, and therefore goods lashed on deck will not be; except of course goods usually stowed there (*l*).

A policy on "freight" will include the benefit a ship-owner expects to derive from carrying his own goods in his own ship (*m*). But freight will not be covered by a policy on goods (*n*).

A policy on "furniture" will include provisions (*o*).

An insurance on *piece goods* will not cover *hats* (*p*).

Section 182.

The policy is sometimes on goods "to be thereafter declared or valued, by ship or ships." This declaration of interest can only be made in accordance with the policy (*q*). The declaration does not require the underwriters' consent, but should be communicated to them (*r*).

(*h*) *Glover* v. *Black*, 3 Burr. 1394.
(*i*) *Crowley* v. *Cohen*, 3 B. & Ad. 478.
(*k*) *Glover* v. *Black*, 3 Burr. 1394.
(*l*) *Ross* v. *Thwaite*, Park, 26; *Da Costa* v. *Edmunds*, 4 Camp. 142.
(*m*) *Flint* v. *Fleming*, 1 B. & Ad. 45; *Devaux* v. *l'Anson*, 5 Bing. N. C. 519.
(*n*) *Baillie* v. *Moudigliani*, Park, 90.
(*o*) *Brough* v. *Whitmore*, 4 T. R. 206.
(*p*) *Hunter* v. *Prinsep*, 1 Marshall, Ins. 323.
(*q*) *Entwistle* v. *Ellis*, 2 H. & N. 549.
(*r*) *Harman* v. *Kingston*, 3 Camp. 150.

SECTION 183.

The intended voyage must be precisely described in the policy (*s*). The omission of the place at which the risk is to commence running will avoid the policy for uncertainty (*t*). But the omission of the time will make the risk run from the date of the policy (*u*).

SECTION 184.

If the words "at and from" the ship's loading port be inserted in the policy, the insurer will be liable for any accident to the ship after her arrival or during her stay at her loading port, as a fire or detention in consequence of an embargo (*x*).

But if the vessel be not at the loading port at the date of the policy, or do not arrive there soon afterwards in good condition, the underwriters will be discharged (*y*).

The ship must leave the loading port as soon after arrival as she reasonably can. An owner desiring to protect his vessel, during a stay in port, should insert a clause to that effect in the policy (*z*).

SECTION 185.

If a vessel arrive at the outward port a mere wreck, a policy on her homeward voyage is of no effect (*a*).

(*s*) *Robertson* v. *French*, 4 East, 130; *Langhorn* v. *Hardy*, 4 Taunt. 628.

(*t*) Molloy, B. 2, c. 7.

(*u*) *Ball* v. *Knight*, Fitz. 274.

(*x*) *Haughton* v. *The Empire M. I. Co.*, L. R., 1 Exch. 206; *Rotch* v. *Edie*, 6 T. R. 413; *Palmer* v. *Marshall*, 8 Bing. 79.

(*y*) *Hull* v. *Cooper*, 14 East, 479; *De Wolf* v. *The Archangel M. B. & I. Co.*, L. R., 9 Q. B. 451; *Bell* v. *Bell*, 2 Camp. 475.

(*z*) *Palmer* v. *Fenning*, 9 Bing. 460; *Palmer* v. *Marshall*, 8 Bing. 79.

(*a*) *Parmeter* v. *Cousins*, 2 Camp. 235.

SECTION 186.

If an insurance be effected "at and from on freight," when the vessel insured is at a foreign port, it will only cover the homeward freight; and not even that, until the ship can commence shipping a homeward cargo (*b*).

SECTION 187.

If the insurance be "to an island" or "district," the risk will determine at the first port at which the vessel stops to unload in the island or district (*c*).

To avoid this result, the owner should insure his vessel "to her port or ports of discharge."

SECTION 188.

If the words "lost or not lost" (*Gallice "sur bonnes et mauvaises nouvelles"*) are added to the list of perils enumerated in a marine policy, though the ship were lost at the date of the insurance being effected, or though the thing insured had not vested in the insured at the time of the loss, the underwriters will be liable for any loss occasioned by any of the perils (*d*).

But if the insured knew, when effecting the insurance, that the vessel was lost, the policy will be vitiated on account of the fraud.

Sometimes the words "lost or not lost," are restrained by warranting the vessel to be well on a certain day.

(*b*) *Williamson* v. *Innes*, 1 M. & Rob. 88.
(*c*) *Camden* v. *Cowley*, 1 W. Bl. 417; *Leigh* v. *Mather*, 1 Esp. 411.
(*d*) *Jeffreys* v. *Legendra*, 1 Show. 189; *E. of March* v. *Pigott*, 5 Burr. 2803.

Even then, however, if she were well on any part of that day, the underwriter will be responsible, though she were lost before the policy was underwritten (*e*).

ILLUSTRATION.

If a merchant insured goods he bought at sea, "lost or not lost," the underwriter would be liable for any loss sustained by them during the voyage, but before the purchase (*f*).

SECTION 189.

A policy of insurance, made in the United Kingdom, must be stamped when effected. If it is not, it can only be admitted in evidence on the payment of 100*l.* penalty, as well as the proper stamp duty (*g*).

But a foreign policy of insurance need not be stamped; unless it be made for or by an English insurance broker, or unless the loss be payable or recoverable here. In these two cases the policy may be stamped within two months after its arrival in this country, but not afterwards (*h*).

SECTION 190.

The *sue and labour clause* in a policy makes it lawful for the assured or his servants to try to prevent imminent damage to the thing insured, without his being liable for any loss resulting therefrom. It also enables the assured to recover all monies he expended in endeavouring to prevent the loss.

(*e*) *Blackhurst* v. *Cockell*, 3 T. R. 360.
(*f*) *Sutherland* v. *Pratt*, 11 M. & W. 296.
(*g*) 39 & 40 Vict. c. 6, s. 2; 30 & 31 Vict. c. 23, s. 9.
(*h*) 28 & 29 Vict. c. 96, s. 15.

SECTION 191.

Any material alteration without the consent of the parties will vitiate the policy, provided such alteration be made after it is signed (*i*). The policy, if altered even with the consent of the parties, will be avoided unless a new stamp be impressed on it; except the alteration is merely to rectify a mistake (*k*).

SECTION 192.

Parol evidence is not admissible to alter or control the meaning of a policy (*l*). But it is admissible in order to explain it according to the custom of trade.

ILLUSTRATION.

Parol evidence was admitted, for the purpose of explaining a policy, to prove that the Gulf of Finland is deemed by merchants part of the Baltic (*m*).

SECTION 193.

The usage of a single house, *e.g.* Lloyd's, not being the usage of trade, will not bind the contracting party; unless he be proved to have known of it (*n*).

(*i*) *Master* v. *Miller*, Smith, L. Cas. Vol. I. 870, and notes.
(*k*) 30 & 31 Vict. c. 23, s. 10.
(*l*) *Aguilar* v. *Rodgers*, 7 T. R. 421; *Yates* v. *Pym*, 6 Taunt. 446; *Hall* v. *Janson*, 4 E. & B. 500.
(*m*) *Udhe* v. *Walters*, 3 Camp. 15.
(*n*) *Gabay* v. *Lloyd*, 3 B. & C. 793.

CHAPTER III.

EFFECT OF DEVIATION ON A POLICY.

Section 144.

Any deviation by the vessel from the voyage specified in the policy, which renders the warranty not to deviate, (see Chap. VII. s. 238,) will vitiate the policy and release the underwriters [illegible]. Provided that if the ship be merely temporarily impeded by an accident, she may go to a neighbouring port or depart as it were till the impediment [illegible] is removed [illegible].

Section 145.

[illegible] the insurance be "at and from an island or district," the vessel may sail from one port to another in such island [illegible].

[illegible] be "at and from her port of loading" in such [illegible] it would be an unreasonable [illegible].

Section [illegible].

[illegible] "at and from her port of loading."

[illegible] 3 B. & C.

[illegible] 7 B.

[illegible] 3 B. & C.

commence loading at one port, and finish at another port out of the course of her intended voyage, it is a deviation and will vitiate the policy (*d*).

SECTION 197.

An insurance on a voyage to several ports specified, will cover a voyage to all or any of them; provided that the vessel must visit them in the order in which they are mentioned in the policy (*e*), and must not divide the voyage, as by loading goods at one port, and unloading them and shipping others at one of the other ports specified (*f*).

If a vessel be insured to a place generally, without providing for her safety while there, the risk will continue till she is anchored at her port of destination, in the usual place for discharging her cargo (*g*).

SECTION 198.

If a vessel be insured for a voyage from or to a district having several ports, the ports must be visited in their geographical order; unless otherwise stipulated by the parties (*h*).

(*d*) *Brown* v. *Tayleur*, 4 Ad. & E. 241.
(*e*) *Marsden* v. *Reid*, 3 East, 572.
(*f*) *Sellar* v. *M'Vicar*, 1 N. R. 23.
(*g*) *Stone* v. *Marine Insurance Co. of Gothenburg*, 1 Exch. D. 81.
(*h*) *Clason* v. *Simmonds*, 6 T. R. 533, n.

CHAPTER IV.

DURATION OF THE RISK.

Section 199.

The risk of the underwriters is as a rule limited to cease when the ship has been moored "for twenty-four hours in good safety," at the port at which she is intended to unload.

The words "good safety" are material. For if the ship, having arrived a mere wreck, foundered after the expiration of the twenty-four hours, the underwriters will be liable on the policy (*i*).

But if after continuing for twenty-four hours from her arrival in safety, she be lost, even though on account of an act performed during the voyage, *e. g.*, on account of smuggling (*k*); or if the words "good safety" be not inserted in the policy; the underwriters will be free from all risk at the expiration of the twenty-four hours, whatever the condition of the vessel.

Section 200.

If the risk is to continue "until the ship be discharged from her voyage," the underwriters' liability will not determine till the goods are unshipped (*l*).

(*i*) *Shawe* v. *Felton*, 2 East, 109; *Minett* v. *Anderson*, Peake's R. 277.

(*k*) *Lockyer* v. *Offley*, 1 T. R. 252; *Angerstein* v. *Bell*, Park, 55.

(*l*) Com. Dig. Merc. E.

Section 201.

The risk on the goods is generally limited, by the policy, to run "until the goods be discharged and safely landed."

The underwriter, on such a limitation, continues liable, though the loss occurred after the goods were trans-shipped into lighters according to the usual custom (*m*); unless the insured had at the time of the loss taken possession of them, or interfered with them (*n*).

The risk commences to run as soon as the goods are shipped.

Illustrations.

Certain goods insured from *London to Jamaica* generally, were destined to a particular place in the island. The usual course in such cases was for the ship to go to an adjoining port, and there to trans-ship the cargo into shallops. Held:—the underwriters, though they had no notice of this, were liable for a loss occurring after such trans-shipment on board the shallops (*o*).

Goods were insured to *London, and until the same should be safely landed there.* On the arrival of the ship in the port of London, the owner of the goods sent his lighter, and received them out of the ship. Before the goods reached the land they were damaged by an accident. Held:—the underwriter was not liable for such damage (*p*).

(*m*) *Stewart* v. *Bell*, 5 B. & Ald. 238; *Matthie* v. *Potts*, 3 B. & P.23.
(*n*) *Sparrow* v. *Caruthers*, 2 Str. 1236; *Strong* v. *Natally*, 1 N. R. 16.
(*o*) *Stewart* v. *Bell*, 5 B. & Ald. 238.
(*p*) *Sparrow* v. *Caruthers*, 2 Str. 1236.

CHAPTER V.

LOSSES COVERED AND EXCEPTED BY THE POLICY.

SECTION 202.

THE following are the losses generally covered by the policy:—Perils of the sea; fire; capture; arrest; embargo; pirates; negligence of crew; and barratry.

SECTION 203.

"Perils of the sea" will only cover casualties arising strictly from sea damage, as, *e.g.*, by a tempest or a collision (*a*).

But a loss occasioned by delay on account of bad weather or by rats or worms is not such a loss (*b*).

If the vessel be not heard of within a reasonable time after sailing, the presumption is that she has foundered (*c*); and the insured may recover for a loss by "perils of the sea."

A loss caused immediately by perils of the sea is within the policy, though it might not have occurred but for the

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(*a*) Com. Dig. Merc. E. 9; *Shaw* v. *Felton*, 2 East, 109; *Montoya* v. *London Assurance Co.*, 6 Exch. 451; *Cator* v. *The Great Western Insurance Co.*, L. R., 8 C. P. 552.

(*b*) *Taylor* v. *Dunbar*, L. R., 4 C. P. 207; *Rohl* v. *Parr*, 1 Esp. 445; *Hunter* v. *Potts*, 4 Camp. 203.

(*c*) Park, 105, 106; *Cohen* v. *Hinckley*, 2 Camp. 50.

concurrent action of some other cause, not within the policy (*d*).

SECTION 204.

The underwriter is liable for any loss by fire, when caused by negligence of the crew, accident, lightning, or by an act required by the State (*e*); unless, in the case of goods, they were so damaged when shipped as to generate the fire which destroyed them (*f*).

ILLUSTRATION.

If the master burns the ship to save her from capture, it is a loss by fire within the policy (*g*).

SECTION 205.

The insurance against "capture" will cover capture by an enemy, but not capture by a British vessel.

If the vessel be recaptured from the enemy, and the owners can have a restitution on paying salvage, the underwriters must indemnify them against the cost of obtaining restitution (*h*).

An insurance against capture by a British war vessel is illegal (*i*).

SECTION 206.

The insurance against "pirates, rovers, and thieves" only applies to persons not belonging to the ship (*j*), and

(*d*) *Dudgeon* v. *Pembroke*, 1 Q. B. D. 96; 2 App. Cas. 284.
(*e*) *Gordon* v. *Rimmington*, 1 Camp. 123; *Austin* v. *Drew*, 6 Taunt. 435; *Hollingworth* v. *Brodick*, 7 Ad. & E. 40; *Busk* v. *Royal Exchange Ass. Co.*, 2 B. & Ald. 73.
(*f*) *Boyd* v. *Dubois*, 3 Camp. 132.
(*g*) *Gordon* v. *Rimington*, 1 Camp. 123.
(*h*) *Berens* v. *Rucker*, 1 W. Bla. 313.
(*i*) *Furtado* v. *Rodgers*, 3 B. & P. 191; *Gamba* v. *Le Mesurier*, 4 East, 407.
(*j*) *Taylor* v. *Liverpool & G. W. Steam Co.*, L. R., 9 Q. B. 546.

therefore will not cover a robbery by one of the crew. It also only applies to robbery with violence, and not to simple theft (*k*).

Section 207.

The insurance against "arrests, restraints, and detainments of kings, princes, and people" will cover an embargo or a prohibition of State (*l*), but not a detainment of the vessel by a riotous mob (*m*).

An "embargo" is a prohibition to depart, or restraint laid on ships or merchandise by the governing body of some State.

A "prohibition of State" prevents foreign ships from putting to sea during war, or excludes them from entering British ports.

Section 208.

A loss occasioned by the negligence or misconduct of the crew is covered by an ordinary policy, and the underwriters are therefore liable for it. But the owner must, as a condition precedent, provide a competent master and crew; otherwise the underwriter will be discharged from his liability (*n*).

Section 209.

Barratry means any cheat or fraud or criminal negligence committed by the captain or mariners of a ship, by

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(*k*) Arnould, Mar. Ins., p. 757.
(*l*) *Aubert* v. *Gray*, 32 L. J., Q. B. 50; *Rodocanachi* v. *Elliott*, L. R., 9 C. P. 518.
(*m*) *Nesbitt* v. *Lushington*, 4 T. R. 783.
(*n*) Per Lord Tenterden in *Shore* v. *Bentall*, 7 B. & C. 798, n.; *Redmam* v. *Wilson*, 14 M. & W. 476.

which the owners or freighters are prejudiced; but not an act committed through incompetence or ignorance.

ILLUSTRATIONS.

A wilful deviation by the master in fraud of the owner is an instance of barratry (*o*); but a deviation through mere ignorance is not.

The captain or crew smuggling, or seizing the ship (*p*), or delaying the voyage with a fraudulent intention (*q*), will constitute barratry.

SECTION 210.

The loss by barratry must occur during the voyage, otherwise the underwriter will not be liable.

ILLUSTRATION.

Captain of a vessel commits during a voyage barratry by smuggling. Therefore the ship is arrested, but not till she has been moored twenty-four hours in safety at her destined port. The underwriter will not be liable; for loss did not occur during the voyage (*r*).

SECTION 211.

If the owner of the ship act as master, he cannot commit barratry as against himself (*s*). Provided that a co-owner acting as master may commit barratry (*t*).

If the fraud be committed with the owner's consent, it will not constitute barratry (*u*); but if done without his consent, though for his advantage, it will (*x*).

(*o*) *Lockyer* v. *Offley*, 1 T. R. 252.
(*p*) *Hibbert* v. *Martin*, 1 Camp. 538; *Toulmin* v. *Anderson*, 1 Taunt. 227.
(*q*) *Roscow* v. *Corson*, 8 Taunt. 684.
(*r*) *Lockyer* v. *Offley*, 1 T. R. 252.
(*s*) *Ross* v. *Hunter*, 4 T. R. 33.
(*t*) *Jones* v. *Nicholson*, 10 Exch. 28.
(*u*) *Nutt* v. *Bordieu*, 1 T. R. 323.
(*x*) *Earle* v. *Rowcroft*, 8 East, 126.

Section 212.

The guarantee in the policy against "other perils" will cover a loss not caused by any of the specified perils.

Illustration.

A crew of a British man-of-war, believing a ship they meet to be hostile, fire on it and sink it. This is a loss by other perils (*y*).

Section 213.

If two or more of the perils insured against contribute equally to the loss, the loss may be attributed to either.

But if they do not contribute equally, the loss must be ascribed to whichever of them proximately caused it (*z*).

Illustration.

A vessel insured is delivered up to an enemy by its crew in fraud of the owner. In an action on the policy the loss may be ascribed to either capture or barratry (*a*).

Section 214.

The following losses are not covered by the policy:—Inherent vice in thing insured (*b*); leakage and breakage; ordinary wear and tear (*c*); mortality among animals, unless caused by violence (*d*); losses only remotely result-

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(*y*) *Cullen* v. *Butler*, 5 M. & Sel. 461; and see *Phillips* v. *Barber*, 5 B. & Ald. 161.

(*z*) *Hagedorn* v. *Whitmore*, 1 Stark. 157; *Livie* v. *Janson*, 12 East, 648; *Dent* v. *Smith*, L. R., 4 Q. B. 414.

(*a*) *Arcangelo* v. *Thompson*, 2 Camp. 620; *Toulmin* v. *Anderson*, 1 Taunt. 227; *Hucks* v. *Thornton*, 1 Holt, 30.

(*b*) *Taylor* v. *Dunbar*, L. R., 4 C. P. 206.

(*c*) Stevens' Av. 160, 166.

(*d*) *Lawrence* v. *Aberdein*, 5 B. & Ald. 107.

ing from the perils insured against (*e*); theft; loss caused by negligence of insured (*f*).

So if the vessel does not complete her voyage through fear of an embargo (*g*), or if her port of destination be blockaded (*h*), or if the cargo be seized after being landed in the customary manner (*i*), the policy will not cover such losses.

Section 215.

If the vessel insured damages another ship by a collision, each vessel has to pay one-half the loss sustained by both. Consequently, if the insured vessel has done more damage than she has received, her owners, if they pay the difference, cannot recover it from the underwriters (*k*). For the proximate cause, the collision, is not one of the perils insured against.

Section 216.

The memorandum at the end of the policy is inserted to free the underwriter from liability on account of small averages.

By virtue of it, he is not liable for any loss (*l*) on the articles enumerated first in the memorandum, or for any loss under 5 per cent. on the second class of articles, or for

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(*e*) *Powell* v. *Gudgeon*, 5 M. & Sel. 431; *De Vaux* v. *Salvador*, 4 A. & E. 420.
(*f*) *Thompson* v. *Hopper*, 6 E. & B. 172.
(*g*) *Forster* v. *Christie*, 11 East, 205.
(*h*) *Hadkinson* v. *Robinson*, 3 B. & P. 388.
(*i*) *Brown* v. *Carstairs*, 3 Camp. 161.
(*k*) *De Vaux* v. *Salvador*, 4 Ad. & E. 420.
(*l*) *The Gt. Indian P. R. Co.* v. *Saunders*, 2 B. & S. 266; *Booth* v. *Gair*, 15 C. B., N. S. 291.

any loss under 3 per cent. on the third class, unless the loss were occasioned by a general average or the stranding of the ship.

SECTION 217.

Every average or partial loss is a charge on the underwriters, if a stranding has occurred, whether or not the loss were really caused by the stranding (*m*).

To constitute a stranding the ship must be stationary at time of stranding. Therefore, if after striking on a rock the ship remain only a short period before sinking, it will not be a stranding (*n*). So if the vessel takes the ground in the ordinary course of navigation, and not through accident, such will not constitute a stranding (*o*).

(*m*) *Wells* v. *Hopwood*, 3 B. & Ad. 34; *Kingsford* v. *Marshall*, 8 Bing. 458.
(*n*) *MacDougle* v. *R. E. A. Co*, 4 M. & Sel. 505.
(*o*) *Per* Lord Tenterden, *Wells* v. *Hopwood*, 3 B. & Ad. 34.

CHAPTER VI.

TOTAL LOSS AND ABANDONMENT.

Section 218.

Losses under a marine policy constitute either a total loss or a partial loss.

There are two kinds of total loss, one total *per se*, the other not total *per se*, but rendered total by abandonment. The latter is termed a constructive total loss. A loss total *per se* occurs when no part of the subject matter of the insurance exists in the possession of or for the benefit of the insured, or when no part of it exists fit for any useful purpose.

If the loss be a total one, notice of abandonment is not required.

Illustrations.

If the vessel be arrested, destroyed by fire, wrecked or lost through barratry, or if the goods sink to the bottom of the ocean, or are confiscated, the loss will be total *per se*, and no abandonment is necessary (*a*).

If sea-damaged goods are sold during the voyage, because they would be completely useless on reaching their destination, such will be considered a total loss, and the insured need not give notice of abandonment (*b*).

(*a*) *Mullett* v. *Shedden*, 13 East, 304; *Mellish* v. *Andrews*, 15 East, 13; *Bondrett* v. *Hentigg*, 1 Holt, 149; *Dixon* v. *Reid*, 5 B. & Al. 597; *Stringer* v. *English & Scottish Insurance Co.*, L. R., 5 Q. B. 599.

(*b*) *Roux* v. *Salvador*, 3 Bing. N. C. 266.

SECTION 219.

If the loss be not total *per se*, notice of abandonment must be given by insured to underwriter, in order that the loss may become a total loss.

Notice of abandonment means notice that the insured will cede all his claims to and rights in the subject matter of the insurance in favour of the underwriter, provided the underwriter will pay him the value of the thing insured (*c*).

When notice of abandonment is required by law, not only the subject matter of the insurance or part of it must exist in specie, but there also must be a prospect, however remote, of its reaching its destination, or at least a prospect of its value being affected by the measures which may be adopted for its recovery or preservation (*d*). Thus notice of abandonment is not required where nothing remains to be abandoned (*e*).

SECTION 220.

The following circumstances will justify the shipowner, in giving notice of abandonment of a vessel insured, and in claiming for a constructive total loss—

(1) Capture of the vessel by an enemy (*f*).

(2) Arrest, detention or embargo of the ship, unless of trifling duration (*g*).

(3) If the ship is injured to such an extent that it is practically useless, and the cost of extricating and

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(*c*) *Thellusson* v. *Fletcher*, 1 Esp. 72; *Parmeter* v. *Todhunter*, 1 Camp. 541.

(*d*) *Per cur.* in *Roux* v. *Salvador*, 3 Bing. N. C. 287.

(*e*) *Potter* v. *Rankin*, L. R., 6 H. of L. Cas. 83.

(*f*) *Hamilton* v. *Mendes*, 2 Burr. 1198; *Paterson* v. *Ritchie*, 4 M. & Sel. 393. But see Section 228 and Illustrations.

(*g*) *Rotch* v. *Edie*, 6 T. R. 413; *Forster* v. *Christie*, 11 East, 205.

repairing her would exceed what she was worth; provided she was seaworthy at the commencement of her voyage.

But if the vessel can be repaired so as to keep the sea at less expense than her repaired value, the insured cannot abandon merely because on account of the decayed condition of the vessel the expense of complete repairs would be greater than this (*h*).

(4) Barratrous seizure, or total desertion at sea of the vessel by the crew.

SECTION 221.

The owner of goods insured will be *primâ facie* justified in giving notice of abandonment of them, in the event of—

(1) Capture, arrest or embargo, unless of a limited duration.

(2) Barratrous seizure or desertion of the vessel by the crew.

(3) Owner being deprived of the control over his goods (*i*).

(4) The ship being disabled, and the goods (being of a perishable nature and sea damaged) being sold by the master. Provided that the ship cannot be soon repaired, or another procured (*k*).

If before the action brought, the goods have been restored to the insured, or if they have been brought into

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(*h*) Arnould, Mar. Ins. p. 1008; *Irving* v. *Manning*, 1 H. of L. Cas. 287.

(*i*) Arnould, Mar. Ins. p. 1015.

(*k*) *Rosetto* v. *Gurney*, 11 C. B. 176; *Farnworth* v. *Hyde*, L. R., 2 C. P. 204; *Meyer* v. *Ralli*, 1 C. P. D. 358.

England, and he can take possession of them, he will lose his right to recover for a constructive total loss (*l*).

Section 222.

If freight be insured, the freight can be justifiably abandoned by the assured, if there has been a constructive total loss of the ship (*m*).

Consequently, detention, capture or any other peril insured against will entitle assured to recover as for a total loss of the freight; unless the freight be earned before action brought, for under a policy on freight generally the underwriters will be discharged from liability, if any freight at all be earned (*n*).

If both ship and cargo are justifiably sold abroad, the insured can recover for a total loss on freight, without giving notice of abandonment.

Mere fact of the shipmaster being unable to forward the cargo will not be a constructive total loss on freight (*o*).

Section 223.

In policies on freight, if the ship is capable of carrying the goods, the underwriter will not be liable if the master sell them or abandon them on account of the cost of conveying them (*p*). Unless the goods have been so damaged, by a peril of the sea during the voyage, that the

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(*l*) *Naylor* v. *Taylor*, 9 B. & Cr. 718; 4 M. & Ryl. 526; *Dixon* v. *Reid*, 5 B. & Ald. 597.

(*m*) *Per* Tindal, C. J., *Benson* v. *Chapman*, 6 M. & Gr. 810.

(*n*) *Everth* v. *Smith*, 2 M. & Sel. 278; *Benson* v. *Chapman*, 2 H. of L. Cas. 696.

(*o*) *Moss* v. *Smith*, 9 C. B. 94.

(*p*) *Mordy* v. *Jones*, 4 B. & C. 394.

carriage of them to their port of destination would cost more than they would realise there; for then the insured may recover from underwriter the freight (*q*).

Section 224.

The insured, though he may be entitled to abandon, is never compelled to do so.

If the insured be entitled to abandon, he must give notice of abandonment within a reasonable time, after receiving reliable information of the loss, and having had an opportunity of estimating the damage done (*r*). If he omits to do so, the underwriter will not be liable for a total loss.

Section 225.

A part of the thing insured cannot be abandoned. Abandonment cannot be partial, it must apply to the whole subject matter of the insurance (*s*).

It must also be unconditional; and made in express terms. Unless the underwriter agrees to accept a conditional abandonment (*t*); or acquiesces in a defective notice of abandonment (*u*).

A parol abandonment is binding (*x*); and no precise

(*q*) *Michael* v. *Gillespy*, 2 C. B., N. S. 627.
(*r*) *Mitchell* v. *Edie*, 1 T. R. 608; *Potter* v. *Rankin*, L. R., 6 H. L. 83; *Fleming* v. *Smith*, 1 H. L. Cas. 513; *Parker* v. *Blakes*, 9 East, 283; *Aldridge* v. *Bell*, 1 Stark. 498; *Read* v. *Bonham*, 3 B. & B. 147; *Gernon* v. *R. E. A. Co.*, 6 Taunt. 383; *Anderson* v. *Wallis*, 2 M. & S. 241; *Kaltenbach* v. *Mackenzie*, 3 C. P. D. 467.
(*s*) Park, 229.
(*t*) *M'Masters* v. *Shoolbred*, 1 Esp. 237.
(*u*) *Hudson* v. *Harrison*, 3 B. & B. 97.
(*x*) *Read* v. *Bonham*, 3 B. & B. 147.

form is required for it, but it should contain or refer to the grounds of the abandonment (*y*).

An abandonment accepted in any form by the underwriters is irrevocable, unless made under a mistake of fact (*z*), *e. g.*, on false information.

Section 226.

Notice of abandonment vests the property in the whole subject matter of the insurance in the underwriter from the moment the loss was sustained, the insured being held a trustee for him (*a*).

Illustration.

If a vessel be validly abandoned, the underwriter will be entitled to the freight she subsequently earns, even though it be insured by other underwriters. He will also be liable to all the liabilities of an owner, *e.g.*, to pay the wages of the crew (*b*).

So, if the underwriter has paid for a total loss, he will be entitled to any part of the vessel or goods saved (*c*).

The assured must if he abandons do everything possible to avert a total loss (*d*), as by providing for the safeguard or recovery of thing insured.

Section 227.

There may be a total loss of an integral part of the goods shipped.

(*y*) Arnould, Mar. Ins. pp. 916 and 918.

(*z*) *Smith* v. *Robertson*, 2 Dow's H. L. 474.

(*a*) *Randall* v. *Cockran*, 1 Ves. sen. 98; *Leatham* v. *Terry*, 3 B. & P. 479; *Thompson* v. *Rowcroft*, 4 East, 34.

(*b*) *Case* v. *Davidson*, 2 B. & B. 379; *Thompson* v. *Rowcroft*, 4 East, 34; *Sharpe* v. *Gladstone*, 7 East, 24; *Green* v. *Royal Exchange Co.*, 6 Taunt. 68.

(*c*) *Houstman* v. *Thornton*, Holt's N. P. 242, *per* Gibbs, C. J.

(*d*) Arnould, Mar. Mar. Ins. 939.

Consequently, if each package shipped be separately valued and insured, the loss of any one package will be a total loss of it (*e*). But if the packages be not so separately valued and insured, though each is distinct from the others, the loss of any one of them will not be a total loss of it, but only an average (*f*).

In the case of a general insurance on various distinct articles, the articles will be severally insured. Consequently, there may be a total loss of any one of them (*g*).

Section 228.

A loss originally total may become partial through a subsequent event.

Illustrations.

If a captured vessel is re-captured, or escapes from her captors, the total loss caused by the capture is reduced to a partial one (*h*).

If in the case of a policy on freight the vessel is detained under an embargo, the loss will be total. However, if after the embargo is withdrawn the ship earns freight, the total loss will become only a partial (*i*).

Section 229.

In calculating a partial loss, if the ship were damaged and repaired by the owner, he can only claim from the underwriter two-thirds of the expense of repairing and not

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(*e*) *Lewis* v. *Rucker*, 2 Burr. 1167.

(*f*) *Ralli* v. *Janson*, 6 E. & B. 422; *Hills* v. *London Assurance Corporation*, 5 M. & W. 569.

(*g*) *Duff* v. *Mackenzie*, 3 C. B., N. S. 16; *Wilkinson* v. *Hyde*, 3 C. B., N. S. 30.

(*h*) *Bainbridge* v. *Neilson*, 10 East, 329; *Brotherston* v. *Barber*, 5 M. & S. 418.

(*i*) *Macarthy* v. *Abel*, 5 East, 388; *Everth* v. *Smith*, 2 M. & S. 278.

the whole (*k*). This is termed *deducting one-third new for old.*

If the goods were damaged, the difference between the gross proceeds realised by them on their arrival and the price they would have fetched had they not been damaged must be ascertained, and then the underwriter will be liable for an aliquot part of the original value corresponding with that difference (*l*).

Therefore, if the difference between the gross proceeds and what the goods would have fetched had they not been injured be one-fourth, the underwriter will be liable for one-fourth of the original value, and not one-fourth of what the goods would have realised had they not been injured, for the underwriter insured their original value, and not their eventual proceeds.

In the case of an open policy, the original value is the invoice price at the port of lading, added to the expenses incurred before the goods were shipped, along with the premium and the costs of effecting the insurance (*m*).

In the case of a valued policy, the original value is of course the value mentioned in the policy (*n*). In the case of an open policy on freight, the loss is estimated on the gross value, and not on the net, at the port of destination (*o*).

Section 230.

The insured may sometimes recover both for a prior

(*k*) *Poingdestre* v. *R. E. A. Co.*, R. & M. 378; *Lohre* v. *Aitchison*, 2 Q. B. D. 501, and 3 Q. B. D. 558.
(*l*) *Usher* v. *Noble*, 12 East, 639; *Hurry* v. *R. E. A. Co.*, 3 B. & P. 308.
(*m*) *Langhorn* v. *Allnutt*, 4 Taunt. 511.
(*n*) *Lewis* v. *Rucker*, 2 Burr. 1167.
(*o*) *Palmer* v. *Blackburn*, 1 Bing. 61.

partial loss and a subsequent total loss of the same thing.

ILLUSTRATION.

If the ship be damaged and repaired, and subsequently be wrecked and so become a total loss, the insured may recover from the underwriter both the cost of the repairs, and the value of the thing insured (*p*).

SECTION 231.

If the loss be caused by a wrongful act, the underwriters cannot claim damages from the wrong-doer, if the owner of the thing insured cannot; notwithstanding that the underwriters have paid for a total loss, and have therefore all the rights of the owner in the damaged property vested in themselves (*q*).

ILLUSTRATION.

If two ships belonging to the same owner be damaged by colliding with each other, the owner cannot of course recover damages on account of his vessels being injured from himself, and consequently the underwriters cannot recover damages (*q*).

(*p*) *Per* Lord Ellenborough in *Livie* v. *Janson*, 12 East, 648; and see *Knight* v. *Faith*, 15 Q. B. 649; *Lidget* v. *Secretan*, L. R., 6 C. P. 616.

(*q*) *Simpson* v. *Thompson*, 3 App. Ca. 279.

CHAPTER VII.

WARRANTIES—EXPRESS AND IMPLIED.

Section 232.

A marine policy usually contains five express warranties, and three other warranties are implied.

A warranty in a policy is a condition or contingency, and unless it be performed there is no contract. The purpose for which it was introduced is immaterial. It must be *literally* complied with.

The express warranties are—

(1) The time of sailing;
(2) The safety of the ship at a particular time;
(3) That the vessel shall depart with a convoy;
(4) That the property is neutral; and
(5) That vessel shall not be seized in her port of discharge.

The implied warranties are—

(1) That the ship shall not deviate from her proper course;
(2) That the ship is seaworthy;
(3) That the insured will take ordinary care to protect the vessel against the risks covered by the policy (*a*).

(*a*) See Smith's Merc. Law, pp. 366, 371.

SECTION 233.

Under the warranty of the time of sailing, the ship must be completely unmoored and ready to sail on the day specified.

If the vessel *bonâ fide* commence her voyage at the stipulated time, it will be sufficient (*b*), though she be afterwards detained compulsorily, as by an embargo (*c*). But mere stress of weather will not excuse her delaying to sail (*d*).

If the warranty be to "depart" or to "sail *from* a certain place," the vessel must not only set sail on the voyage, but also be out of port on or before the stipulated day (*e*).

SECTION 234.

The safety of the vessel at a particular time is warranted in order to restrain the force of the words "lost or not lost."

If the vessel be safe at any moment of the day on which it is warranted well, the warranty will be complied with (*f*).

SECTION 235.

The warranty that the ship shall leave port with a convoy is usually inserted when war is being waged by the state to which she belongs. The convoy must consist of a naval force under the orders of some individual appointed

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(*b*) *Wright* v. *Shiffner*, 11 East, 515; 2 Camp. 247; *Lang* v. *Anderdon*, 3 B. & C. 495.

(*c*) *Bond* v. *Nutt*, Cowp. 601; *Cochrance* v. *Fisher*, 1 C. M. & R. 809.

(*d*) *Nelson* v. *Salvador*, M. & M. 309; *Bouillon* v. *Lupton*, 15 C. B., N. S. 113.

(*e*) *Moir* v. *R. E. A. Co.*, 3 M. & S. 461; 6 Taunt. 241.

(*f*) *Blackhurst* v. *Cockell*, 3 T. R. 360.

by the government of that state. The appointment of its commander by the government is material, for a war vessel by mere chance going on the same voyage as the vessel insured will not be a sufficient convoy within the warranty (*g*).

The vessel must keep with the convoy during the whole voyage, except when impossible, *e.g.* in consequence of a storm (*h*).

To comply with the warranty to depart with convoy, the master must take his sailing instructions from the commander of the convoy before the ship leaves the place of rendezvous (*i*).

Section 236.

The warranty that the property is neutral is also usually inserted during war. The warranty only refers to the neutrality of the vessel when the risk commences, and does not necessitate the vessel continuing neutral during the voyage (*k*). Under the warranty the ship must belong to the subject or subjects of a neutral state, and it must be documented as a neutral and navigated in accordance with the rules of International Law and with the treaties entered into between the state to which she belongs and the belligerents (*l*). Carrying simulated papers, or hostile despatches, or contraband goods, is a breach of the warranty of neutrality. The sentence of a foreign Court having jurisdiction in questions of prize, that the vessel is

(*g*) *Hibbert* v. *Pigou*, Park, 498.
(*h*) *Jeffrey* v. *Legendra*, 3 Lev. 320.
(*i*) *Anderson* v. *Pitcher*, 2 B. & P. 164.
(*k*) *Eden* v. *Parkinson*, Dougl. 732; *Tyson* v. *Gurney*, 3 T. R. 477.
(*l*) *Garrels* v. *Kensington*, 8 T. R. 230; *Rich* v. *Parker*, 7 T. R. 705; *Baring* v. *Christie*, 5 East, 395.

lawful prize, will be conclusive evidence in actions on policies of insurance that the warranty has been broken, provided that the basis of the judgment falsify the warranty (*m*).

SECTION 237.

The warranty of freedom from seizure in her port of discharge will free the underwriters from any liability in the event of confiscation, seizure, or capture of the ship in the port of discharge. But if the vessel be not within the harbour or within that part of it where ships usually unload when it was seized, the underwriter will not be exempted from liability by this warranty (*n*).

SECTION 238.

A warranty that the vessel shall not deviate from the proper course of the voyage insured is always implied in marine insurance. Such a deviation will discharge the underwriter from any liability for a loss occurring after the deviation; but not for a loss occurring before it (*o*).

Any wilful and unnecessary departure whatever from the proper track of the voyage is sufficient to constitute a deviation, *e.g.*, going into a port for a purpose unconnected with the voyage (*p*).

No usage of trade can be set up to control the express terms of the policy.

(*m*) *Baring* v. *Claggett*, 3 B. & P. 201; *Bolton* v. *Gladstone*, 5 East, 155; *Garrels* v. *Kensington*, 8 T. R. 230.

(*n*) *Keyser* v. *Scott*, 4 Taunt. 660; *Levy* v. *Vaughan*, 4 Taunt. 387.

(*o*) *Green* v. *Young*, 2 Raym. 840.

(*p*) *Hammond* v. *Reid*, 4 B. & Ald. 72; *Solly* v. *Whitmore*, 5 B. & Ald. 45.

Even an express permission granted by the policy must be construed with reference to the main object of the voyage. Therefore, under a liberty to "stop at any port or ports whatever," no stay at any port may be made unless to further the voyage (*q*).

If the policy permits stopping at several specified ports, they must be visited in the order mentioned in the policy (*r*), and in all cases the stay must be of a reasonable duration (*s*).

A liberty to touch at a port implies the liberty of trading there (*t*).

Cruising for a prize in time of war is a deviation (*u*), provided the policy does not grant liberty to do so. A liberty to chase will not include a liberty to cruise for prizes.

Mere intention to deviate will not vitiate the policy (*x*).

The following circumstances will, as a general rule, alone justify a deviation :—

(1) To join a convoy (*y*);

(2) Stress of weather (*z*);

(3) The necessity of repairing the vessel (*a*);

(4) The approach of a hostile ship (*b*); and

(*q*) *Langhorn* v. *Allnutt*, 4 Taunt. 511.
(*r*) *Gairdner* v. *Senhouse*, 3 Taunt. 16.
(*s*) *Williams* v. *Shee*, 3 Camp. 469; *Phillips* v. *Irving*, 7 M. & G. 325.
(*t*) *Raine* v. *Bell*, 9 East, 195; *Laroche* v. *Oswin*, 12 East, 131.
(*u*) *Cock* v. *Townson*, Park, 448.
(*x*) *Kewley* v. *Ryan*, 2 H. Bl. 343; *Heselton* v. *Allnutt*, 1 M. & S. 46.
(*y*) *D'Aguilar* v. *Tobin*, 1 Holt, 185.
(*z*) *Delany* v. *Stoddart*, 1 T. R. 22; *Smith* v. *M'Neil*, 2 Dow, 538.
(*a*) *Motteux* v. *L. A. Co.*, 1 Atk. 547.
(*b*) *O'Reilly* v. *Gonne*, 4 Camp. 249.

(5) The mutiny, desertion, or illness of the crew, or any other inevitable accident;

provided that none of the above mentioned circumstances be caused through the fault or negligence of the insured (*c*).

Section 239.

A warranty that the vessel insured is in a seaworthy condition at the commencement of the voyage will be implied in all policies of marine insurance, when she has been insured *from* a port. Or if she has been insured *at and from* a port, a warranty that she was seaworthy when at the port (*d*).

The term seaworthy has to be interpreted according to the situation of the vessel. Thus, if she be in port, it means she is in a condition to be reasonably free from danger there, though she may be in want of repairs (*e*).

A ship to be seaworthy at the commencement of the voyage, must be properly equipped and manned by a competent master and crew, and have on board a pilot, if necessary under an Act of Parliament (*f*).

There is no implied warranty that the vessel shall continue seaworthy during the voyage, it being sufficient if she be seaworthy at the commencement of the risk (*g*).

(*c*) *Driscol* v. *Bovil*, 1 B. & P. 313; *Driscoll* v. *Passmore*, 1 B. & P. 200; *Elton* v. *Brogden*, 2 Str. 1264.

(*d*) *Small* v. *Gibson*, 16 Q. B. 128, *per* Parke, B.

(*e*) *Annen* v. *Woodman*, 3 Taunt. 299.

(*f*) *Wedderburn* v. *Bell*, 1 Camp. 1; *Wilkie* v. *Geddes*, 3 Dow, 57; *Shore* v. *Bentall*, 7 B. & C. 798 n.; *Forshaw* v. *Chabert*, 3 B. & B. 158; *Tait* v. *Levi*, 14 East, 481.

(*g*) *Biccard* v. *Shepherd*, 14 Moore, P. C. C. 471.

SECTION 240.

A *time policy* is a policy by which the ship is insured for a certain period, instead of for a certain voyage.

In a time policy, as it is generally effected when the vessel is at sea, or in a position in which the owner cannot know her state, no warranty of seaworthiness is implied by the law (*h*).

SECTION 241.

A warranty that the insured will use ordinary care to protect the vessel against the risks insured against is also implied in every marine policy.

Consequently the insured cannot claim from the underwriters compensation for any losses caused by his own negligence (*i*).

The owner must see that the vessel has the proper documents on board, viz. such as may be required by the government of the state to which she belongs; and if the warranty of documentation be infringed by the vessel carrying simulated papers, the underwriters will be discharged, provided the ship be condemned by a foreign Prize Court, having jurisdiction, for carrying false papers (*k*), but not otherwise.

SECTION 242.

Violation of a mere *ex parte* regulation of a foreign state

(*h*) *Small* v. *Gibson*, 4 H. L. Ca. 353; *Michael* v. *Tredwin*, 17 C. B. 551; *Jenkins* v. *Heycock*, 8 Moore, P. C. C. 351; *Dudgeon* v. *Pembroke*, L. R., 1 Q. B. D. 96; 2 App. Cas. 284.

(*i*) *Pipon* v. *Cope*, 1 Camp. 434; *Law* v. *Hollingsworth*, 7 T. R. 160; *Bell* v. *Carstairs*, 14 East, 374.

(*k*) *Oswald* v. *Vigne*, 15 East, 70; *Flindt* v. *Scott*, 5 Taunt. 674.

will not avoid a policy (*l*). But a violation of a rule of the law of nations will.

SECTION 243.

If the vessel's national character be *expressly* warranted, the underwriters will be freed from all liability, if she had not her proper documents on board when she set sail (*m*). But where no such express warranty has been inserted in the policy, and the implied warranty alone exists, the underwriters will not be discharged from their liability, unless a loss occur in consequence of the proper documents not being carried by the vessel (*n*).

SECTION 244.

In the case of an insurance on goods, no warranty of documentation is implied (*o*); except when they belong to the owner of the ship conveying them (*p*).

SECTION 245.

The mere fact of the goods lost having been stowed on the deck, will not exempt the underwriters from their liability; but they must prove such lading to be improper (*q*).

(*l*) *Nonnen* v. *Reid*, 16 East, 176.
(*m*) *Rich* v. *Parker*, 7 T. R. 705.
(*n*) *Bell* v. *Carstairs*, 14 East, 374, *per* Ellenborough, C. J.
(*o*) *Dawson* v. *Atty*, 7 East, 367; *Carruthers* v. *Gray*, 15 East, 35.
(*p*) *Bell* v. *Carstairs*, 14 East, 374; *Horneyer* v. *Lushington*, 3 Camp. 85.
(*q*) *Milward* v. *Hibbert*, 3 Q. B. 120.

CHAPTER VIII.

MISREPRESENTATION AND CONCEALMENT.

SECTION 246.

ANY *fraud*, misrepresentation, or concealment of any *material fact* on the part of the insured, will avoid the *policy ab initio*. In other words, in all contracts of insurance there must be the strictest *bona fides* (*a*).

As the policy is avoided *ab initio*, the underwriter may protect himself under the plea of fraud, misrepresentation, or concealment, though the loss was occasioned by something wholly unconnected with the fact fraudulently misrepresented or concealed.

SECTION 247.

A material fact is one influencing the underwriter to effect the policy or inducing him to fix the premium at the sum at which he did fix it (*b*).

A misrepresentation of a material fact will avoid the contract, whether the insured stated as true a thing he

(*a*) *Carter* v. *Boehm*, 3 Burr. 1905; *Middlewood* v. *Blakes*, 7 T. R. 163.
(*b*) *Sibbald* v. *Hill*, 2 Dow's P. C. 263.

knew to be false, or a thing he did not know to be true (*c*), or whether he stated it *bonâ fide* under a mistake (*d*).

Section 248.

A misrepresentation to the first underwriter of a material fact will be a misrepresentation to all the underwriters (*e*), provided that the misrepresentation tended to induce the underwriters to take a lower premium. But a misrepresentation made to any underwriter but the first, will not be a misrepresentation to all (*f*).

Though a representation be not literally correct, yet if it be substantially true, it will not avoid the policy (*g*).

Section 249.

In the case of a policy, a representation differs from a warranty in that the representation may be either written or oral, and is never inserted in the policy; while a warranty must always be in writing and contained in the policy, unless, of course, it be a warranty implied by law (*h*).

Hence it follows that it will be sufficient if a representa-

(*c*) *Macdowal* v. *Fraser*, Doug. 260; *Duffell* v. *Wilson*, 1 Camp. 401; *Behn* v. *Burness*, 3 B. & S. 751.

(*d*) *Ionides* v. *The Pacific F. & M. I. Co.*, L. R., 6 Q. B. 674.

(*e*) *Pawson* v. *Watson*, Cowp. 785; *Marsden* v. *Reid*, 3 East, 572.

(*f*) *Bell* v. *Carstairs*, 2 Camp. 543; *Brine* v. *Featherstone*, 4 Taunt. 869.

(*g*) *Pawson* v. *Watson*, 2 Cowp. 785; *Nonnen* v. *Reid*, 16 East, 176; *Von Tungeln* v. *Dubois*, 2 Camp. 151.

(*h*) *Pawson* v. *Watson*, 2 Cowp. 785; and see *Cornfoote* v. *Fowke*, 6 M. & W. 378.

tion be substantially complied with, while a warranty must always be fulfilled to the letter (*i*).

Another difference between a representation and a warranty in a policy is, that in the case of a representation the fact misrepresented must be a material one; while in the case of a warranty it does not matter whether it be material or not. Provided that if the assured intended to deceive the underwriter by his representation, the materiality or immateriality of the fact misrepresented will make no difference. But the policy will in either case be avoided (*k*).

Section 250.

If in spite of a representation entirely opposed to the terms of the policy, the underwriter sign the policy, he cannot afterwards plead the misrepresentation as a defence to an action by the insured on the policy (*l*).

The insured may withdraw a representation he has made at any time before the insurance is effected (*m*).

Section 251.

The insured or his agent must not conceal from the underwriter any material fact (*n*) lying within his private knowledge; for any such concealment, whether by design

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(*i*) *Dent* v. *Smith*, L. R., 4 Q. B. 414.

(*k*) *Per* Maule, J., *Evans* v. *Edmonds*, 13 C. B. 777; Arnould, Mar. Ins. 515.

(*l*) *Bize* v. *Fletcher*, 1 Dougl. 284.

(*m*) *Carter* v. *Boehm*, 3 Burr. 1905; *Edwards* v. *Footner*, 1 Camp. 530; *Fitzherbert* v. *Mather*, 1 T. R. 12.

(*n*) *Durrell* v. *Bederley*, 1 Holt, 283; *Ionides* v. *Pender*, L. R., 9 Q. B. 531; *De Costa* v. *Scandret*, 2 P. Wms. 170; *Mackintosh* v. *Marshall*, 11 M. & W. 116; *Anderson* v. *Thornton*, 8 Exch. 425; *Gladstone* v. *King*, 1 M. & S. 35; *Carter* v. *Boehm*, 3 Burr. 1905.

or mistake, will vitiate the policy *ab initio;* provided that the insured need not inform the underwriter of what he ought to know as a usage of trade (*o*); or of general topics of speculation, *e.g.*, the probability of a war or a tempest (*p*); or of what is warranted, *e.g.*, seaworthiness of the vessel insured (*q*); or of anything as to which he impliedly dispenses with the insured giving him any information (*r*).

The following may be material facts:—

The date of the ship's sailing, or the time when she was last heard of; her national character; facts rendering her liable to capture; sailing without convoy; character of her cargo; her port of loading; state of the weather, and of the vessel (*s*).

The mere fact of the information as to these facts being false, will not excuse the owner for not communicating them, if it would have influenced the underwriter (*t*).

Section 252.

If the owner, after ordering his broker to insure his vessel, receives further information material to the insurance, but the insurance is effected before he is able to inform the broker of it, the policy will be valid (*u*); but if he could have informed the broker, and did not through

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(*o*) *Noble* v. *Kennoway*, Dougl. 510; *Moxon* v. *Atkins*, 3 Camp. 200; *Stewart* v. *Bell*, 5 B. & Ald. 238.

(*p*) *Carter* v. *Boehm*, 3 Burr. 1905.

(*q*) *Haywood* v. *Rogers*, 4 East, 590; *Shoolbred* v. *Nutt*, Park, 346.

(*r*) *Per* Lord Mansfield in *Carter* v. *Boehm; Fort* v. *Lee*, 3 Taunt. 381.

(*s*) *Campbell* v. *Innes*, 4 B. & Ald. 423; *Bates* v. *Hewitt*, L. R., 2 Q. B. 595; *Sawtell* v. *London*, 5 Taunt. 359; *Nicholson* v. *Power*, 20 L. T., N. S. 590; *Gladstone* v. *King*, 1 M. & Sel. 35; *Harrower* v. *Hutchinson*, L. R., 5 Q. B. 584.

(*t*) *Lynch* v. *Hamilton*, 3 Taunt. 37.

(*u*) *Wake* v. *Atty*, 4 Taunt. 493.

fraud or negligence, the policy will be vitiated. So, if such information were received after the slip was initialed, though before the policy was executed, the policy would be valid, even though the ratification of the insured was required (*x*).

Section 253.

A marine policy effected by one person for another person, but without his authority, may be ratified by the latter after the loss of the thing insured, even though he knew of the loss at the date of such ratification (*y*).

(*x*) *Cory* v. *Patton*, L. R., 9 Q. B. 577; *Lishman* v. *The Northern M. I. Co.*, L. R., 10 C. P. 179.
(*y*) *Williams* v. *North China Insurance Co.*, 1 C. P. D. 757.

CHAPTER IX.

ILLEGALITY.

Section 254.

An insurance on an illegal voyage, as *e. g.*, a voyage made for purposes of smuggling, is void. If only part of the voyage be illegal, the insurance will still be void; for an infirmity in any part of the voyage or policy will invalidate the whole (*a*).

Consequently, if illegal goods be insured in the same policy as legal, the policy will be void; but an insurance on licensed goods brought from an enemy's country will not be invalidated merely because some unlicensed goods were on board the vessel that brought them (*b*).

If a vessel be insured "at and from," any illegality existing in the risk while she is at the port will avoid the insurance on the entire voyage, even though there is no illegality when the vessel sails (*c*).

If the voyage would contravene, if completed, some Act of Parliament, or a commercial treaty with a foreign state,

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(*a*) *Parkin* v. *Dick*, 11 East, 502; *Bird* v. *Pigou*, 2 Selw. N. P. 932.
(*b*) *Pieschell* v. *Alnutt*, 4 Taunt. 792.
(*c*) 1 Marshall, Ins. 69.

it will be an illegal voyage; and consequently cannot be validly insured (*d*).

Section 255.

An insurance effected on a vessel, whether British or foreign, in contravention of an embargo, will be null and void (*e*).

Section 256.

Insurances effected on a vessel or goods belonging to an enemy are illegal and of no effect (*f*).

Insurances on an adventure carried on jointly by a British subject and an enemy are also illegal and void; unless the British subject be domiciled in a neutral state (*g*).

Section 257.

An insurance on articles which are contraband of war is absolutely void and not enforceable in the country of the belligerents. However, it will be valid and enforceable in the courts of a neutral power (*h*).

The following articles are *inter alia* contraband of war:—Ships, naval stores, and all materials essential to shipbuilding; but provisions are not.

(*d*) *Wilson* v. *Marryatt*, 1 B. & P. 430; and *per* Lord Stowell, *The Eenrom*, 2 C. Rob. A. R. 1.

(*e*) *Delmada* v. *Motteux*, 1 Park, 505.

(*f*) *Brandon* v. *Nesbitt*, 6 T. R. 23; *Furtado* v. *Rogers*, 3 B. & P. 191; *Brandon* v. *Curling*, 4 East, 410.

(*g*) *Potts* v. *Bell*, 8 T. R. 548; *Wilson* v. *Marryatt*, 8 T. R. 31.

(*h*) 1 Marshall, Ins. 75.

SECTION 258.

If the insured intended an illegal adventure, and the policy covers it and is therefore void, the underwriter will not be entitled to recover the premium (*i*).

ILLUSTRATION.

A broker effected a policy with an underwriter on goods on board a Spanish ship at and from New Orleans and Pensecola, both or either, to her port of discharge in the United Kingdom, with a memorandum of receipt of the premium from J. P., a merchant in London. The policy was made on behalf of a Spanish merchant at Vera Cruz. At the time of effecting it New Orleans belonged to the Americans, who were at war with Great Britain, and Pensecola to the Spaniards, who were neutrals. The object of the assured was to cover an importation of cotton wool in Spanish ships from New Orleans to Great Britain. Held:—the underwriter could not recover the premium, the adventure from New Orleans with cotton wool being illegal (*k*).

SECTION 259.

An insurance by a foreigner against British capture is illegal; unless accidental and made through mistake (*l*).

(*i*) *Jenkins* v. *Power*, 6 M. & S. 282; *Palyart* v. *Leckie*, 6 M. & S. 290.

(*k*) *Jenkins* v. *Power*, 6 M. & S. 282.

(*l*) *Touteng* v. *Hubbard*, 3 B. & P. 291; *Mullett* v. *Shedden*, 13 East, 304.

CHAPTER X.

ADJUSTMENT AND RETURN OF PREMIUM.

SECTION 260.

UNLESS the underwriter can deny his liability to make a loss good to the insured, he immediately proceeds to adjustment, *i.e.*, determines the sum which the insured can claim under the policy, at the same time fixing the amount for which each underwriter is liable.

The adjustment operates as an admission by the underwriter of all the facts necessary to make him liable (*a*); but it is not conclusive.

If the underwriter has paid the loss, knowing all the facts of the case, but under a mistake of law, or under compulsion of legal process, he cannot recover the amount so paid (*b*); but if the payment were made under a mistake of fact, he can recover it (*c*).

If the underwriter, after paying a loss, finds out that there was either fraud, misrepresentation, or concealment in the original contract of insurance, or that he paid under

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(*a*) *Christian* v. *Coombe*, 2 Esp. 489; *Rogers* v. *Maylor*, Park, 194; *Shepherd* v. *Chewter*, 1 Camp. 274.

(*b*) *May* v. *Christie*, Holt's N. P. 67; *Marriott* v. *Hampton*, 7 T. R. 269.

(*c*) *Reyner* v. *Hall*, 4 Taunt. 725.

a mistake of fact, he can recover the money from the assured, or his broker if the broker has not yet paid over the insurance money to the assured (*d*). Such a payment is termed a *foul loss*.

Section 261.

If the underwriter establishes his non-liability on the policy, he must return the premium to the insured if the risk has not commenced to run (*e*); unless, of course, there be an express stipulation to the contrary (*f*).

But where the risk covered by the policy is entire, and has commenced to run, the insured cannot claim the return of the premium, or of any part of it (*g*).

Illustrations.

Goods intended to be exported to United States are insured; but no goods are put on board. The underwriter must return the premium, for the risk has not commenced to run (*h*).

So, if a vessel insured *from* Liverpool *to* New York, sail in an unseaworthy condition, the premium must be returned to the insured; for the policy was vitiated *ab initio* by the breach of the implied warranty of seaworthiness, and consequently the underwriter was never under any liability on the policy (*i*).

But if the vessel had been insured *at and from* Liverpool to New York, the premium could not be reclaimed by the insured; for the risk attached while the vessel was at Liverpool, *i. e.*, the risk had commenced to run as against the underwriter (*k*).

(*d*) Arnould, Mar. Ins., p. 1056.
(*e*) *Routh* v. *Thompson*, 11 East, 428; *Henry* v. *Staniforth*, 4 Camp. 270; *Penson* v. *Lee*, 2 B. & P. 330.
(*f*) *Audley* v. *Duff*, 2 B. & P. 111.
(*g*) *Tyrie* v. *Fletcher*, Cowp. 666; *Bermon* v. *Woodbridge*, Dougl. 781; *Langhorn* v. *Cologhan*, 4 Taunt. 330.
(*h*) *Martin* v. *Sitwell*, 1 Show. 100.
(*i*) *Penson* v. *Lee*, 2 B. & P. 330.
(*k*) *Annan* v. *Woodman*, 3 Taunt. 299; *Meyer* v. *Gregson*, Park, 588.

So, if after starting on the voyage, the vessel deviates, though that will discharge the underwriter from all liability under the policy from the date of the deviation, yet he will not be bound to return the premium (*l*).

SECTION 262.

If the consideration for the insurance be illegal, as, *e.g.*, in the case of a wager policy, the premium cannot be recovered by the insured (*m*). Provided that if the risk has never attached, the insured can recover the premium he has paid (*n*).

SECTION 263.

If the fraud or misrepresentation of the underwriter has vitiated the policy, the premium must be returned to the assured (*o*).

SECTION 264.

A return of the premium cannot be claimed by the insured if he or his agent had been guilty of fraudulent misrepresentation or concealment (*p*), or if the contract of insurance be illegal (*q*), even though the risk never commenced to run.

But if the return of the premium were demanded before the commencement of the voyage and the contract formally

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(*l*) *Tait* v. *Levi*, 14 East, 481; *Moses* v. *Pratt*, 4 Camp. 297.
(*m*) *Lowry* v. *Bourdieu*, 2 Dougl. 468; *Aubert* v. *Walsh*, 3 Taunt. 276.
(*n*) *Tappenden* v. *Randall*, 2 B. & P. 467.
(*o*) *Duffell* v. *Wilson*, 1 Camp. 401.
(*p*) *Wilson* v. *Ducket*, 3 Burr. 1361; *Tyler* v. *Horne*, Park, 329.
(*q*) *Wilson* v. *R. Ex. As. Co.*, 2 Camp. 623; *Cowie* v. *Barber*, 4 M. & S. 16; *Andrée* v. *Fletcher*, 3 T. R. 266.

renounced, the insured will be entitled to it; for a *locus pœnitentiae* is allowed him (*r*).

Section 265.

If insurance be in effect on two or more voyages, and one or more has been begun, the premium must be apportioned, and a proportionate part returned in respect of the voyage or voyages not yet commenced; for the risk in such an instance is not entire (*s*).

Section 266.

If only part of the goods insured are shipped, the premium must be apportioned, and a part of the premium corresponding to the value of the goods not put on board must be returned. This is generally termed "*the return of premium for short interest*" (*t*). So a *return of premium for short profits* must be made in a similar case when profits are insured (*u*).

If in the case of an open policy on goods or freight the goods and the freight be over-insured, *i.e.*, in excess of the interest of the assured, a portion of the premium corresponding to the excess must be returned. This is termed generally a *return for over-insurance.*

But in the case of an over-insurance by a valued policy, no portion of the premium is reclaimable by the assured (*x*).

(*r*) *Palyart* v. *Leckie*, 6 M. & S. 290.
(*s*) *Stevenson* v. *Snow*, 3 Burr. 1237; *Long* v. *Allen*, Park, 589.
(*t*) *Eyre* v. *Glover*, 16 East, 218; *Horneyer* v. *Lushington*, 3 Camp. 90; *Fisk* v. *Masterman*, 8 M. & W. 165.
(*u*) *Eyre* v. *Glover*, 16 East, 218.
(*x*) Stevens on Av. 200.

SECTION 267.

In all cases in which the premium is returnable, the underwriter can deduct one half per cent., unless the policy contain an express stipulation to the contrary, or unless he be guilty of any fraudulent misrepresentation or concealment (*y*).

SECTION 268.

In the event of a double insurance, the insured will be entitled, in cases in which the premium is returnable, to a rateable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the property at risk (*z*).

SECTION 269.

If by several policies made *bonâ fide* the sum insured exceed the value of the property insured, all the underwriters on the several policies will be equally bound to return the premiums for the excess sum in proportion to their respective subscriptions (*a*). But if of various policies effected on the same property at different times, the earlier policies have attached before the later have been underwritten, the premium is returnable on the later only; for the earlier policies, up to the execution of the later, sustained a risk equal to the full amount of their subscriptions (*b*).

(*y*) Stevens on Av. 206.
(*z*) Arn. Ins. p. 1069.
(*a*) 2 Marshall, Ins. 649.
(*b*) *Fisk* v. *Masterman*, 8 M. & W. 165.

CHAPTER XI.

REMEDIES ON THE POLICY.

SECTION 270.

THE remedy on a valid policy is by action, which may be brought either in the principal's or broker's name.

The assignee of the policy may sue on it in his own name, provided he be entitled to the property insured by it (*a*).

If the policy expressly stipulate for a reference to ascertain the amount due, if it be disputed, then such reference will be the remedy (*b*).

If the insured brings several actions on the policy against several underwriters, the Court will stay proceedings in all the actions save one, provided the defendants agree to be bound by whatever verdict shall be given in that action. However, the insured will not be bound by that verdict (*c*).

In an action by an assignee of a marine policy, the underwriters can set off a debt owed them by the insured for any premiums due on policies effected with them by the assured before the assignment (*d*).

(*a*) 31 & 32 Vict. c. 86, s. 1; 36 & 37 Vict. c. 66, s. 25; *North of England P. O. Co.* v. *Archangel M. I. Co.*, L. R., 10 Q. B. 249; *Lloyd* v. *Fleming*, L. R., 7 Q. B. 299.

(*b*) *Scott* v. *Avery*, 5 H. of L. Ca. 811; *Tredwen* v. *Holman*, 1 H. & C. 72; *Elliott* v. *The R. E. A. Co.*, L. R., 2 Ex. 237.

(*c*) *Doyle* v. *Douglas*, 4 B. & Ad. 545.

(*d*) *Pellas & Co.* v. *Neptune Marine Insurance Co.*, 4 C. P. D. 139.

SECTION 271.

Though in effecting a policy of marine insurance the agreement is in practice made by the *slip*, *i. e.*, a memorandum containing the terms of the proposed insurance, and initialed by the underwriters, yet such slip is void, and an action cannot therefore be brought on it. For no contract for marine insurance is valid unless it is expressed in the policy (*e*).

However, the slip is admissible as evidence in certain cases, as, *e. g.*, to explain the intention of the parties, or to fix the date of the contract.

SECTION 272.

A policy broker has a lien on the policy for any premium he has paid on it, as against his employer, even though such employer were merely an agent for an undisclosed principal (*f*).

Provided that he will have no lien, if he knew the real principal and elected to credit the agent, who employed him (*g*). His lien may be superseded by a special contract, or by his particular mode of dealing with the parties for whom he effected the policy, though it will not be so superseded in consequence of his merely agreeing to receive monthly payments on account of the premium he has paid (*h*).

(*e*) 30 & 31 Vict. c. 23, s. 7; *Parry* v. *The Great Ship Co.*, 4 B. & S. 556: *Ionides* v. *The Pacific I. Co.*, L. R., 6 Q. B. 674; *Cory* v. *Patton*, L. R., 9 Q. B. 577.

(*f*) *Mann* v. *Forester*, 4 Camp. 60; *Bell* v. *Jutting*, 1 Moore, C. P. & Exch. 155.

(*g*) *Maanns* v. *Henderson*, 1 East, 335; *Sweeting* v. *Pearce*, 7 C. B., N. S. 449.

(*h*) *Fisher* v. *Smith*, 4 App. Cas. 1.

SECTION 273.

The underwriter cannot free himself from his liability on the policy by effecting a re-insurance with other underwriters, except in the case of his death or bankruptcy (*i*).

Re-insurance is a contract of insurance by which an insurer insures himself with other insurers in respect of the same subject matter, on the same risks and under the same conditions as those expressed in the original policy (*k*).

The original assured has no claim against the re-insurer, but only against the original insurer.

SECTION 274.

If the owner insure his vessel or goods with two or more sets of underwriters, such *double insurance* is valid (*l*); provided that he cannot recover from them more than the amount of his loss (*m*).

If he recovers the full amount of his loss from one set of underwriters, that set can claim contribution from the others.

The insured can only recover the amount agreed on in the policy, after deducting what he has received on other policies on same thing; for payment on one of two policies on the same thing is a defence *pro tanto* to an action on the other, whether it be an open or valued one (*n*).

(*i*) 19 Geo. 2, c. 37; *Mackenzie* v. *Whitworth*, 1 Ex. D. 36.
(*k*) Arnould, Pt. I., Ch. III.
(*l*) Arnould, Mar. Ins. p. 328; *Imperial Marine Insurance Co.* v. *Fire Insurance Corporation*, 4 C. P. D. 166.
(*m*) *Newby* v. *Reid*, 1 W. Bl. 416.
(*n*) *Bruce* v. *Jones*, 1 H. & C. 769; *Irving* v. *Richardson*, 1 Mood. & Rob. 153; *Morgan* v. *Price*, 4 Exch. 615.

SECTION 275.

If the insured recover compensation for the loss both from the underwriter and also from a wrongdoer, by whose act or negligence the loss was occasioned, he must hand over the damages he recovers from the wrongdoer to the underwriter. For a marine policy is a contract of indemnity.

Similarly, if the insured has already recovered the amount of his loss from the wrongdoer, he cannot bring an action against the underwriter on the policy.

ILLUSTRATION.

A ship insured being sunk, the underwriters paid the owner 6,000*l.* as compensation. Subsequently the owners recovered 5,000*l.* as damages from the wrongdoer. The ship was worth 9,000*l.* The insured must hand over the whole 5,000*l.* damages to the underwriters (*o*).

SECTION 276.

The underwriters have no independent right to maintain in their own name, and without reference to the person insured, an action against the wrongdoers for any damage caused by them to the vessel or goods insured (*p*).

(*o*) *The North of England Insurance Association* v. *Armstrong*, L. R., 5 Q. B. 244.

(*p*) *Simpson* v. *Thomson*, 3 App. Cas. 279.

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